United States Court of Appeals

for the Second Circuit

APPENDIX

B
P.75

74-8058
1238

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

—against—

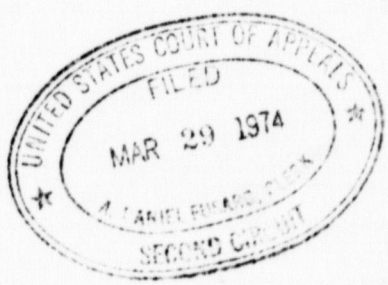
STANTON FREEMAN, *et al.*,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX FOR DEFENDANT-APPELLANT

Vol. II—Pages 311 to 685



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INDEX

	PAGE
Relevant Docket Entries	1a
Superceding Indictment	2a
Trial Transcript	3
Memorandum of Decision	1027
Notice of Appeal	1037

MM:pc
take 3/2

THE COURT: Do you have any notes, memoranda taken at or about the time that you interviewed Miss Tambini, Mr. Levine?

MR. LEVINE: No.

THE COURT: Do you, Mr. King?

MR. KING: No.

THE COURT: Did you see any agents taking notes of what you were saying as you were talking?

THE WITNESS: No.

CROSS EXAMINATION

BY MR. BELDOCK: (continued)

Q Was there any tape recordings made of your conversations?

THE COURT: Did you see any recording device that recorded the questions and answers?

A No.

THE COURT: Was any stenographer present taking down notes while you were being questioned?

THE WITNESS: No.

MR. FRIED: At this time, I represent that there were no tape recordings made with Miss Tambini.

I have inquired of the agents and there

are no notes. Everything was reduced to this written statement, and I have given to Mr. Beldock all the material that the Government has of any interview or any 3500 material.

MR. BELDOCK: Now, we ask for any notes taken by Mr. Fried.

MR. FRIED: I was present when Miss Tambini was brought in before the arraignment. I read the statements that had already been taken from her and I questioned her from the statement and I have no notes made at that time.

MR. BELDOCK: Are there any other notes taken at any other time?

MR. FRIED: I have no other notes taken at any other time.

CROSS EXAMINATION

BY MR. BELDOCK: (continued)

Q You left Brazil when you were how old?

A 20 years old.

Q And that was when, in 1971?

A In April.

Q Where did you go from there?

A Where did I go?

Q Yes.

A I came to New York.

Q Did you travel alone or with anyone else?

A Alone.

Q Where did you go in New York?

A I went to live with a friend in New Jersey.

Q And how long did you stay in New Jersey?

A For two years.

Q Then what did you do?

A I had a room rented in New York City.

Q How long did you stay there?

A One month.

Q For what period of time did you remain in New York at that time?

A 9 months.

Q What month did you leave New York? What month and what year, if you recall.

A I guess it was January of 1972.

Q What was your occupation during those 9 months in New York City?

A I studied photography and I worked as a waitress.

Q Where did you work as a waitress?

A In a Mexican restaurant.

Q What was the name and where?

A Mexican Gardens in the Village.

19

Tambini - cross/Beldock

Q Did you work there for about the 9 months involved?

A No, just about 3 or 4.

Q Where else did you work during that period of time?

A At Schraffts.

Q For how long?

A A month.

Q Did you have any other income except from working as a waitress?

A My father used to send me some money.

Q Did you know Hermano Albuquerque during that 9 month period?

A Yes.

Q Did you start to live with him during a certain point?

A Yes.

Q When was that?

A Around June.

Q Of 1971, right?

A Yes.

Q You said before that you had never heard of Mr. Freeman before this case?

A That is right.

Q And you never heard his name or knew anything about him; is that right?

A That is right.

Q Would your answers be the same regarding this other gentleman that I am pointing to here whose name is Kim Ornitz and I am asking this question with the permission of Mr. Wall.

Had you ever heard about him, his name?

A Never.

Q When I say before this case, I mean before you were arrested? Do you understand?

A Yes.

No, never.

Q When did you first meet Rosalys Rudner?

A When I came back from Brazil to the States in April of '72.

Q And had you known Francisco Rudge before that?

A Yes, in 1971 I met him.

Q Do you know -- excuse me, your Honor.

MR. BELDOCK: May I consult with Mr. Wall?

THE COURT: Yes.

Q Have you ever met a ma n named George Mauro?

A No.

21

Tambini - cross/Beldock

Q Have you ever met a man by the name of George Simon?

A No.

Q Have you ever met a person named Theresa Costa?

A No.

Q Did you ever meet a person named Lila?

A No.

Q Don't go so fast, Lila Jardin?

A Oh, Leela, L-e-e-l-a, yes.

Q What is her last name?

A Barbosa, yes. I met her in London.

Q When?

A Around September of '72.

Q Did you then become friendly with her?

A Yes.

Q And did you and Hermano visit with her from time to time?

A Yes.

Q Did you know a friend of hers named David?

A Yes.

Q What is his second name?

A Preston.

Q Is he an American or a European?

A He is a British.

Q During 1973, did you do some travelling around different places in the world?

A Yes.

Q Where did you go and when?

A I went to Germany, I passed through Holland, Belgium, France, Spain, Morocco, and I came back through Paris to London.

Q About how long did you take to make that trip?

A About a month and a half.

Q Where were you in February, travelling again?

A I am not sure.

Q Were you in Tangier in February?

A Probably so. I went to Morocco.

Q Algeciras, where is that?

A We were travelling by car.

Q You and who?

A Me and Hermano.

Q And how about the trip, 6 weeks or so, the beginning of January, who were you travelling with?

A With Hermano Albuquerque.

Q What was the source of your money that you lived on during 1972 and '73?

A My father was sending me some money, besides that I worked with Hermano in the restaurant, and I worked modelling in a night school.

Q In March of '73, not May, but March of '73, did you go to London?

A Yes.

Q Did you go alone or together with somebody else?

A Alone.

(continued on the next page.)

BS:pc
take 4/1

Tambini - cross/Beldock

Q Did Hermano arrive sometime after that?

A Yes.

Q Where were you staying, with Leela?

A With Leela.

Q Did Leela know Chico as Francisco Rudge?

A No, she didn't.

Q She didn't know Chico?

THE COURT: Is this Chico, Francisco Rudge, to your knowledge?

THE WITNESS: Yes.

Q Did Leela know Rosales?

A No.

Q Did you know Rosales then, right?

A Yes.

MR. BELDOCK: I would like this document marked at the moment for identification. It was turned over to me by the Government, and I would rather not describe it aside from the fact that it is some paper in a cellophane wrapper, and then a second, a translation.

THE COURT: I would like everything that has been turned over to the defendants to be marked for identification, I think it is very important.

MR. FRIED: I'm sorry, your Honor.

MR. BELDOCK: This was just turned over at this moment.

THE COURT: Let the document and the translation be marked. The document is to be marked with a letter and the translation to be marked with a letter and number.

THE CLERK: So marked as defendant's exhibit --

THE COURT: No consultation.

MR. BELDOCK: I object to the conference between counsel and the witness.

Incidentally, when I said "turned over to me, your Honor, we were shown this for the first time during the luncheon break when we were working, and it was given to me for my use at this time.

THE CLERK: Document marked defendant Freeman's exhibit C and translation marked defendant Freeman's exhibit C-1 for identification.

(So marked.)

THE COURT: Of course, Miss Tambini, you do speak and write in Spanish?

THE WITNESS: A little bit.

THE COURT: What is your native tongue?

THE WITNESS: It is Portuguese.

MR. BELDOCK: Your Honor, on reconsideration, I would like to offer defense exhibit C for identification with the translation into evidence at this time so I can have it before the Court in questioning this witness, and so I can have it officially before this witness to ask her questions about it.

MR. FRIED: I would object to that until the witness herself identifies it, if she can.

THE COURT: You can do it either way. May I see it?

MR. BELDOCK: Yes.

(Handing to Court.)

MR. FRIED: This is the document that was referred to at the hearing that was found in the wastepaper basket of Miss Rudner's room and was pieced together by the case agents?

THE COURT: You object to this, Mr. Fried?

MR. FRIED: I don't object to the letter as the letter, your Honor, what I do object to

is the use of it with this witness unless she herself has ever seen it.

That was my only objection.

THE COURT: All I can say is that there was no basis for introducing this in evidence. If you object to it I will sustain the objection.

MR. FRIED: Then I object to it.

THE COURT: It may be marked for identification.

MR. BELDOCK: It has been, Judge.

THE COURT: It is marked for identification at the present time? You may use it.

BY MR. BELDOCK:

Q Miss Tambini, you said that to your knowledge this person Leela, with whom you stayed, did not know either --

THE COURT: Excuse me, did you say you stayed with Leela?

THE WITNESS: Yes.

THE COURT: And that was in London?

THE WITNESS: Yes.

Q This person Leela did not know either Rosales or Francisco?

A At the time being.

Q At that time, in March of '73?

A Yes, I guess so.

Q At that time they did know each other?

A They knew each other afterwards.

Q After that. Did Rosales and/or Francisco come to London after that, after March of '73?

A They have been there, I think. I don't know.

Q How long were you in London, beginning in March of '73?

A I wasn't living with Leela all this time.

Q You stayed with her when you first arrived, is that right?

A No.

Q When did you stay with her?

A I stayed with her in March -- when I came back from my tour. I don't know if it's March or April, I don't remember.

Q Did you ever have any discussions with Leela about cocaine?

A No.

Q Ever have any discussions with Leela about you and Hermano going on business?

A I can't remember, but I don't think so.

Q In March of '73, did you learn that this

friend of Leela's name David had obtained some cocaine?

A No.

Q Do you know a person named George Costa?

A No.

Q Do you know a person named George Simon?

A No.

Q Do you know who I am talking about when I refer to George Moto or George Costa or George Simon?

A I've heard about him, but with the lawyers and about --

Q Only after the arrest, right?

A Yes.

Q I would like you to look at the document, defendant's exhibit C for identification, and C-1 for identification and see if it refreshes your recollection on the question of whether in March of '73 your friend Leela knew Rosales or Francisco.

THE COURT: Refresh your recollection as to whether her friend knew these people?

MR. BELDOCK: Whether she knew that her friend knew.

MR. FRIED: Objection.

THE COURT: I will allow it in revised form.

MR. BELDOCK: I'm sorry, Judge, you're

right. I misspoke.

Q Do you want to look at it in Portuguese?

THE COURT: Would you like to read it in Portuguese?

THE WITNESS: It doesn't matter.

THE COURT: Do you read English?

THEWITNESS: Yes.

MR. FRIED: I request that counsel be careful, that is in many little pieces and you have to only handle the plastic, otherwise it will come apart.

Of course at this time I object to her looking at any document without a voir dire or some indication that --

THE COURT: I will allow it for the limited purposes stated. It is only to find out whether what is before you refreshes your recollection as to whether you knew that Leela knew Rosales Rudner or anyone else in that document.

MR. KATZ: May I be permitted to look at the English translation?

THE COURT: Surely.

MR. FRIED: You can't open it.

8

THE COURT: Don't open it because apparently it is so fragile that it may fall apart.

Try to read it through the cellophane and then you may look at the English translation.

Will you turn it over to the witness, Mr. Katz? And Miss Tambini, will you look at the English translation?

The only question is, does this document refresh your recollection that you knew that Leela knew Rosales Rudner and any of the others that Mr. --

THE WITNESS: I know that Leela knows Rosales and Francisco, I know that they know each other, but I can't, you know -- I can't know when they met each other because I wasn't in London, I wasn't living in London.

Q You gave an address to the reporter which you said was the address you were living at in London with Hermano Albuquerque in the end of May, 1973, and you said at that time Francisco Rudge came to see you in London.

What address did you give?

A Could you repeat it?

Q Yes. It is confusing.

9

THE COURT: What address did you live at in London, what was your address?

THE WITNESS: For Francisco?

MR. BELDOCK: May I repose it, Judge?

THE COURT: Yes.

Q I was asking you a few moments ago about whether you stayed with Leela the whole time and you said no, you did not.

Is that right?

A Yes, right.

Q You only stayed with her for a short period of time, is that right?

A Around 3 months.

Q Then that would have been March, April, May, right, that would have been the whole time you were in London, right?

A No. I arrived in London in August of '72.

Q Then you travelled out to the various places you told us about?

A In January I travelled, in March I came back and I stayed with Leela until August of -- no, no, until -- excuse me, I am mixed up with dates.

Q Isn't it true that Francisco Rudge came to see you in London to discuss your importing cocaine and at

that time he visited you at your address in London?

A Yes.

Q And that was 25 Kensington Park Gardens, right?

A Yes.

Q And that is Leela's address, right?

A Yes.

Q That's the address on the back of that envelope you have before you, exhibit 1?

A Yes. I lived for three months since March until June, when I left.

Q What business were you and Hermano conducting in London, if any?

A When?

Q 1973.

A Hermano worked in a restaurant, then we went for a tour in Europe. We had bought a car. We sold the car. We came back and my father was sending me some money.

Q Have you ever met a man named David Duffy?

A No.

Q When you were in New York City at any time in the company of Rosales or Francisco or Hermano, did you ever meet a man named David?

A No. The only David I know is David Preston.

11

Tambini - cross/Bellock

Q There are certain indications on the back of this passport that have to do with money, apparently.

Could you explain it to me, please?

A When you buy traveller's checks in Brazil, sometimes they put on your passport. This is money that my father gave to me.

Q This is page 32 to which I am referring, the bottom half regarding April 12, 1972.

A It was when I came to the United States for the second time.

Q What is that figure above it?

A This --

Q Right above the stamp April 12, '72.

A This is a thousand dollars.

Q That is a thousand. Under the stamp?

A 500.

Q And then do you know the date of the entry at the top of the page?

A The day?

Q Yes.

A It's April 19th.

Q 1970 --

A 1.

Q How much money does it show there?

A It's a thousand dollars, 980 in traveller's checks and 20 in money.

Q All that is money your father gave you?

A Yes.

Q What does your father do, incidentally?

A He owns a business in cereals.

Q There is another entry in here. I ask you to translate it. It has to do with the bank in Tangier, that is February 13, 1973. What does that mean, on page 14?

A When you change money in Morocco they put this on your passport because you can change just a certain amount.

Q How much was that?

A I have no idea, sir.

Q It says 3500 something or other.

A I have no idea.

Q Mr. Fried was asking you about the time that Mr. Rudge came to see you in London in May of '73. What did he say to you then about cocaine?

A What did he say to me about cocaine?

Q Yes.

A I don't know what to tell -- you mean about the deal?

Q Yes, what did he say?

13

A He just said that I would bring some cocaine from South America to the States, just that.

Q Who was present?

A Present?

Q Who was there during this conversation?

A Who was there?

Q Yes.

A Francisco and me at first.

Q Then who, anyone else?

A No.

Q You said Francisco and me at first. Who came after that?

A Hermano came later on, as I told before.

Q So he asked you to carry some cocaine and you agreed?

A Yes.

Q Did he say how much money would be involved?

A No.

Q Did he say how much value would be involved?

A No.

Q Did he say what you would get for it?

A Not at this time.

Q And you simply agreed, is that right?

A Yes. I knew that I would get some money and I would

like to make this move with him.

Q Had you ever acted as a carrier for cocaine before?

A No.

Q Had you ever been involved in any discussions with Francisco before about cocaine?

A No.

Q Had you ever had any conversations before with Rosales about cocaine?

A No.

Q Or Hermano?

A No.

Q Or Leela?

A No.

Q So you just agreed and you came to New York, right?

A Yes.

Q And there, after you got together, you went to the Hotel Albert where there was another conversation?

A Yes.

Q This time with you, Hermano, Rosales and Francisco, right?

A Yes.

Q Was this the only time that you met with

Francisco to talk about what you were to do?

A Could you repeat the question?

Q Did you ever meet again with Francisco and talk with him about what you would do, regarding the cocaine?

A No, just what I told Mr. Fried.

Q Just this one time in the Hotel Albert and the one time in London, that's all I want to establish, just those times, or was there any other times?

A No, these two times.

Q Tell us what Mr. Rudge said to you, or Rosales said to you at the Hotel Albert about the cocaine?

A That I would be going to Buenos Aires, that I would be waiting there for Rosales and then I would get a suitcase with cocaine and I would be coming back to New York.

Q Did they tell you how much money you would receive?

A Yes.

Q Who told you?

A Francisco.

Q How much did he say?

A 5,000.

Q Did they tell you how much cocaine would be

involved?

A No.

Q Did they say anything else about it?

A He say he wasn't sure about how much cocaine.

Q Did you ever say to your friend Rosales -- she was your friend, wasn't she, Rosales?

A Yes.

Q When you saw her picture at the end of your direct testimony, you said, "That's my friend Rosales."

Is that right?

A Yes.

Q You liked her, is that right?

A Yes.

Q And you received how much money before you went to Buenos Aires?

A I received a thousand dollars to buy tickets and pay the hotel in Buenos Aires.

Q Was all the money that you received in cash?

A In cash, yes.

Q Any other form?

A $500 in traveller's checks.

Q There was one question the Judge asked you. In response to that you said you met Rosales about a year before June of '73, one time, right?

A Yes.

Q And that you had not seen her for a period of a year?

A I'm sorry, it wasn't one time.

Q Well, when you said to the Judge, -- correct me if I am wrong, that you had not seen Rosales for a period of a year before June of '73, was that right or was that a mistake?

A Yes, I met her a year before '73.

(continued on the next page.)

DS/LH 5/1

Q For the first time?

A For the first time.

Q Then during the period up to June of 1973 did you see her on a number of occasions?

A In 1973?

Q In 1972 and 1973?

A In 1972, yes, while I was in New York. When I went to Europe I didn't see her anymore.

Q Did you know when you came to the United States from Buenos Aires, did you know what was in Rosalys Rudner's bags?

A As far as I knew, her clothes.

Q Did you know anything else about what was in those bags?

A No.

Q Did you know whether there was any cocaine in the bags?

A No, no, I don't know.

Q Had there been any discussion about her having cocaine?

A As far as I know she didn't have.

THE COURT: Did you room together at the Sheraton down in Buenos Aires?

THE WITNESS: Yes.

THE COURT: How long did you stay together down there?

THE WITNESS: Just one night. I didn't see her luggage. But I was not aware that she had any cocaine.

BY MR. BELDOCK:

Q And in New York City when you were with her in New York City did you know of her having any cocaine?

A If she had any cocaine?

Q Yes.

A No.

Q Have you ever seen this item before, Government's Exhibit 13 in evidence (indicating)?

A No.

THE COURT: Do you know whether Rosalys Rudner used cocaine?

THE WITNESS: She had tried.

THE COURT: Did you ever see her sniff it?

THE WITNESS: No.

THE COURT: Put it in any drink?

THE WITNESS: No.

BY MR. BELDOCK:

Q Did Rosalys speak Portuguese?

A Yes.

Q Did she speak English?

A Very little.

Q When you took your plea of guilty in this case did you understand that Mr. Rudge was also going to plead guilty?

A Yes.

Q Did you understand that the case against Hermano was going to be dismissed?

A I wasn't sure.

Q But you expected that it would be?

A Yes, because there wasn't really any case against him.

Q Weren't you told that there was an understanding among counsel --

A No.

Q -- that if you pleaded guilty and Francisco pleaded guilty the case against Hermano would be dismissed?

A There wasn't.

Q You were not told?

A It wasn't the case, no.

Q You were of course very concerned about Hermano to whom you are very close? Is that right?

A Yes.

Q When you were arrested and questioned by the agents on June 13th at the airport whatever you told them

then, you kept telling them that Hermano wasn't really involved?

A Because that is the truth.

MR. BELDOCK: I am not doubting you. I just want to know if that is the fact.

Excuse me, Judge, I think we are just about finished.

Thank you very much Miss Tambini.

THE COURT: Do you have any questions, Mr. Wall?

MR. WALL: No questions.

THE COURT: Any redirect, Mr. Fried?

MR. FRIED: Your Honor, I have no redirect.

THE COURT: You may step down.

Thank you.

(Witness excused.)

THE COURT: All right. We will suspend at this time. The case will continue at 10:00 O'clock.

MR. FRIED: Tomorrow morning?

THE COURT: Tomorrow. Should this take more than the morning?

MR. FRIED: Well, your Honor, tomorrow --

MR. BELDOCK: It has to because we have a number of witnesses.

5

MR. FRIED: The Government has Mr. Rudge and then at least Mr. Duffy --

MR. BELDOCK: Davis.

MR. FRIED: Duarte.

MR. BELDOCK: Steele. And the two agents.

MR. FRIED: And the two agents.

MR. BELDOCK: The Government's case may run beyond --

MR. FRIED: May run beyond tomorrow.

MR. BELDOCK: Although we will only be working the case evidence tomorrow and not argument so we might get it all in. And I am a little tired now.

THE COURT: You think I ought to schedule another case about 11:00 O'clock in the morning.

MR. FRIED: Tomorrow? Well, your Honor --

MR. WALL: If the prosecutor want to nolle this I think you would have an open calendar.

THE COURT: I meant the other alternative, you know what that is.

MR. WALL: Never. Never.

THE COURT: I would reduce the amount of time involved.

MR. FRIED: Oh, your Honor, before we suspend,

6

so we can save bringing the cocaine back, your Honor, I prefer to introduce the cocaine into evidence and then if you have no objection letting it go back to the custody of the --

THE COURT: Any objection to having the evidence -- you are talking about what?

MR. FRIED: Well, we have not introduced into evidence the five pounds.

THE COURT: Well, Miss Tambini has not identified it. But do you concede that she would testify that this is the cocaine --

MR. BELDOCK: She wouldn't know.

THE COURT: Or that the agents would testify that there was a change of custody and that the Government can prove, and that this is in fact the cocaine seized from Miss Tambini on the evening of --

MR. FRIED: On the 13th of June.

THE COURT: Do you concede that?

MR. BELDOCK: Yes I do.

THE COURT: And you, Mr. Wall.

MR. WALL: Yes.

THE COURT: All right. Then it may be returned to the vault.

7

MR. FRIED: Well, first at this time I would offer it in evidence as Government's Exhibit 23.

THE COURT: All right suppose we mark it.

THE CLERK: So marked as Government's Exhibit 23 in evidence.

(Article referred to was received and marked Government's Exhibit 23 in evidence.)

MR. FRIED: So far as the small amounts of cocaine, Mr. Beldock and Mr. Wall, do you require that they be here tomorrow for examination?

THE COURT: May the other cocaine and the cocoa leaves be returned too?

MR. BELDOCK: I think we might want those.

MR. FRIED: All right, we will have those. The small amount will be here.

THE COURT: 10:00 O'clock tomorrow. I hope to start promptly at 10.

(Thereupon at 4:40 O'clock P.M. an adjournment was taken to Wednesday, September 12, 1973 at 10:00 O'clock A.M.)

****

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

73-CR-633

STANTON FREEMAN and KIM ORNITZ, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

September 12, 1973
10:00 a.m.

B e f o r e :

HONORABLE JACOB MISHLER, CHIEF U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

ROBERT A. MORSE, ESQ.
United States Attorney
For the Eastern District of New York

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Assistant U.S. Attorney

PATRICK M. WALL, ESQ.
Attorney for Defendant Ornitz

MYRON BELDOCK, ESQ.
Attorney for Defendant Freeman

- - -

(The defendants are not present.)

MR. FRIED: Your Honor, yesterday I was directed by the Court that anything I had turned over to the defendants should be marked in evidence, and while we are waiting I could do that at this point. The seizure report of the witness Wilbur Smith was turned over to the defendants, a copy of that.

THE CLERK: So marked Government's Exhibit 24 for Identification.

(So marked.)

MR. FRIED: I was also asked to produce the receipt that Stanton Freeman, the defendant, signed for certain items which we returned to him. This is a copy which has not been turned over and I now mark it for identification.

THE CLERK: So marked as Government Exhibit 25.

(So marked.)

MR. BELDOCK: I would like your Honor to understand that this is a receipt for certain credit cards and a few other items that Mr. Freeman signed, and it is not the receipt we were asking for during the suppression hearing

of items returned by Mr. Levine to Dawn Freeman, Mr. Freeman's wife, although they are separated. I just want that distinction made.

The Government apparently has not been able to locate that other receipt; is that right, Mr. Levine?

MR. LEVINE: That is correct at the present time, your Honor. The receipt that was made out by Dawn Freeman occurred, I believe, on June 26th in the presence of Agent Silvestro and it was for the briefcase of Stanton Freeman and a Canadian drivers license renewal and assorted keys and other items, was the wording of the receipt.

Again I have to blame it on the movement between offices from 201 Varick Street to 57th Street, where a lot of papers, receipts and other items were misplaced, and we are still attempting to locate them.

THE COURT: What is the significance of the receipt, Mr. Beldock?

MR. BELDOCK: I didn't want to elicit a complete explanation, I just wanted the Court to know that this receipt we are talking about

is not the receipt we were talking about before.

THE COURT: Is there any question about him receiving the merchandise?

MR. BELDOCK: No.

THE COURT: Are the defendants still within the jurisdiction?

MR. BELDOCK: I am positive of that, having spoken to Mr. Freeman last night, and I will go out and look for him in the hall, if I may.

THE COURT: He will find his way, I am sure.

MR. FRIED: I would also like to offer as Government's Exhibits for Identification the rap sheet on Mr. Francisco Rudge, who will be a witness this morning.

THE CLERK: So marked as Government Exhibit 26 for Identification.

(So marked.)

MR. FRIED: The rap sheet on Marilene Tambini, which has already been shown to the defendants.

THE CLERK: So marked as Government's Exhibit 27 for Identification.

(So marked.)

MR. FRIED: The rap sheet on Defendant Kim Ornitz.

THE CLERK: So marked as Government Exhibit 28 for Identification.

(So marked.)

MR. FRIED: And a similar sheet for the defendant Stanton Freeman.

THE CLERK: So marked as Exhibit 29 for Identification.

(So marked.)

MR. FRIED: Although Mr. Hermano Albuquerque has not testified as a witness, for the sake of completeness, this has been shown to defendants' counsel and I offer for Identification Hermano Albuquerque's similar document.

THE CLERK: So marked as Government Exhibit 30 for Identification.

(So marked.)

MR. FRIED: It is Mr. Albuquerque's FBI Identification Division fingerprint report.

In addition, we were directed by the Court to provide a copy of the original report

written by Mr. Levine on the events subsequent to June 15. This has been shown to the counsel for the defendants, and I offer this as a Government exhibit for Identification.

THE CLERK: Four-page report marked Government Exhibit 31 for Identification.

(So marked.)

MR. FRIED: Your Honor, there is one piece of administrative business which has not been completed between counsel and myself, and that is there was a tape-recording of Mr. Ornitz voice and that has not been heard by the counsel of this date. They have been provided with a copy of the transcript.

THE COURT: I thought a voice print was mentioned once before, but you said it had no value.

MR. BELDOCK: There is a voice print, I understand, of my client's call when Mr. Silvestro, the agent, called him on the morning of June 19. I have never seen a transcript of that call.

MR. FRIED: There is no voice print, your Honor. What it is is a tape-recording of

a call that was made to Mr. Freeman by Agent Jay Silvestro, which was then identified as Mr. Freeman's voice by the hotel clerk.

MR. BELDOCK: That is a call we acknowledge making.

MR. FRIED: It is only a short conversation, perhaps a minute or so. The Kim Ornitz -- phone call made by Mr. John Spencer Davis to the defendant Kim Ornitz has been transcribed and a transcription of that has been provided, and perhaps for the sake of completeness I should offer that transcript as a Government Exhibit for Identification.

Your Honor, this is an uncorrected copy of the transcript which Mr. Ornitz did read and I will offer this as a government exhibit for identification. Mr. Wall read, I am sorry.

THE CLERK: So marked as Government Exhibit 32 for Identification.

(So marked.)

(The defendants are now present.)

DEFENDANT ORNITZ: Excuse my lateness, your Honor.

THE COURT: Let the record show that the

defendants have appeared and we are now ready to proceed.

Mr. Fried, will you call your next witness. Is Mr. Rudge your next witness?

MR. FRIED: If Mr. Duarte is here from the hotel he will be the next witness. When I came down at 10 to 10 he had not yet arrived.

He will be down in one minute, your Honor.

R A F A E L A . D U A R T E , called as a witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRIED:

Q Mr. Duarte, would you please tell the Court by whom it is that you are employed?

A By the Central Paramount Hotel.

Q Can you tell us in what capacity you are so employed?

A Assistant Manager.

Q Mr. Duarte, how long have you been employed by the Paramount Hotel?

A Fifteen years.

Q Before you were employed at the Paramount Hotel, can you tell us from where you came?

A I was in Cuba.

Q Can you tell us what your prior occupation was when you were in Cuba?

A Prior to the Paramount, I was in the Hotel Nacionale in Havana.

Q Were you on duty as a desk clerk, Mr. Duarte, on June 18th at the Hotel Paramount?

A Yes, sir.

MR. FRIED: I would like to offer this as Government Exhibit 33 for Identification.

(So marked.)

MR. FRIED: I offer this as Government Exhibit No. 33 in Evidence.

MR. BELDOCK: No objection.

MR. WALL: No objection.

THE COURT: Let it be marked.

THE CLERK: So marked.

(So marked.)

BY MR. FRIED:

Q Mr. Duarte, I show you Government Exhibit 33, which has been introduced in Evidence, and ask if you can tell the Court what that is?

A That is our registration card and also the bill.

Q What room does that refer to, Mr. Duarte?

A 1815.

Q Can you tell us who was registered in that room?

A Miss Rudner.

Q On the 18th of June 1973, when you stated you were on duty, did you have any inquiry concerning that room?

A Yes, I had a telephone call.

Q Can you tell us when you received that telephone call?

A About 1 o'clock, more or less.

THE COURT: Is that A.M. or P.M.?

THE WITNESS: P.M.

MR. FRIED: At this point I would like to offer the stipulation, with the consent of Mr. Beldock, that the phone call the witness is about to refer to is the phone call that was made and admitted to have been made by the defendant Stanton Freeman.

MR. BELDOCK: That is correct.

MR. FRIED: On that basis, the Government will not, unless Mr. Beldock at a subsequent time desires, introduce the voice tape-recording that was made thatwas subsequently listened to by this witness.

MR. BELDOCK: I know of only one phone call. My client made a call at that time and I have to assume it is this.

So the stipulation is certainly in line with the evidence.

THE COURT: All right.

(Continued on next page.)

Q Mr. Duarte, will you tell us to the best of your recollection what was said during that phone call?

A The party said, "I am calling reference to the lady that is registered in 1815."

So I took a glance at the room rack and I said, "1815 is a vacant room."

He said, "Well, there was a lady registered there a few days ago and she had baggage in the room, but she couldn't go back to the hotel." And when I was mentioning the room 1815, the bellboy that was in front of me made some signal so that I covered the phone and say, "What happened?" And he told me that the day before they had packed the baggage and put it in the check room and that there was a couple of agents of the Government watching to see if anybody would come in to pick up that baggage.

So then I said, "Well, I been informed that the baggage is in the checkroom because the party didn't show up here for several days and no one slept in the room, and we couldn't carry this room indefinitely because we didn't know if we were going to get paid." So we checked out this bill and put the baggage in the checkroom. So in order to pick up the baggage the bill would have to be paid.

So then the party said, "Well, there is no problem, I will pay whatever will have to be paid, but I want to

pick up the baggage.

I say, "Well, all right, come in and pick up the baggage. What is your name?"

And he said, "My name is John Davis."

I said, "You have to bring some identification and some authorization from this lady to pick up the baggage and the money to pay the bill." And that was all.

Q Mr. Duarte, concerning this phone call, is your recollection clear at this point that this is what occurred during that phone call? Do you have any doubts in your mind?

A Well, this happened in the middle of June. A few days ago I believe you called me and asked me if I remember about this call and you asked me whether I remember what name they have given me on the phone, and I think I said I think it was David or Davis.

Then the same day Mr. Beldock came in and he questioned me about this. Then I called you and asked if it was proper to answer his question and you told me yes, I can answer all his questions, if you wish.

So he said, "Do you think that the name Davis or David maybe was suggested to you by the police or by somebody here and that the name was not in the conversation at all?"

When he told me that I started to doubt, I said, "Gee, maybe, maybe it's true that it was suggested to me. I can't remember exactly, it's such a long time ago."

But since then I've been thinking about it. After I had this call I went off duty at 3 o'clock and this man didn't come in to pick up the baggage until I had gone home, so I couldn't have picked up the name from the police or from anybody else because I wasn't in the hotel.

So I also questioned one of the agents that I had spoke to before they arrested this man, and I said, "Do you remember what I told you the day of the arrest? I want to make sure. I think I told you that I had a call, you know," what I just repeated here, and he said, "Yes, that was exactly it."

I said, "Did I mention that name to you?"

And he said, "Yes." The only time I spoke to this agent was before the arrest, because I had gone home and I didn't see him after that.

MR. FRIED: I have no further questions of this witness.

Thank you.

THE COURT: Mr. Beldock?

MR. BELDOCK: Yes, your Honor.

May I call upon the Government to produce

any and all notes or memoranda concerning any prior conversations with Mr. Duarte?

MR. FRIED: Your Honor, Mr. Levine has informed me that he made no notes at the time that he interviewed Mr. Duarte at the Hotel Paramount. Consequently, there are no notes.

THE COURT: All right.

MR. BELDOCK: Is there any report of any conversation between Mr. Duarte and any agents, or anybody, an official report like the one --

MR. FRIED: The report that has already been turned over, which was marked as an exhibit for identification this morning.

THE COURT: Mr. Levine's report.

MR. FRIED: Mr. Levine's report is the only -- Government Exhibit No. 31 for Identification is the only report that is in existence that I am aware of that was made that covers the situation.

I just learned that the next day, the date following the arrest of Mr. Davis, Agent J. Silvestro, who will testify later in this trial, did speak to the witness and was supposed

to have made a report and that report has never been made. He may or may not have notes, and at this time I don't know. He had no notes, is my information.

MR. BELDOCK: If he is going to make a report --

THE COURT: There is no report in existence. You can't turn over what is not in existence.

The Government says there is no report concerning any of the testimony that this witness gave on direct. That is as absolute as you can get it. There is no compulsion by the Government to make reports. The only obligation is to turn over what they have.

MR. BELDOCK: Yes, your Honor.

CROSS-EXAMINATION

BY MR. BELDOCK:

Q Mr. Duarte, your tour of duty ends at 3 or 3:30 p.m. in an afternoon, is that right?

A Yes, sir.

Q So you went off duty that day at the regular time?

A Yes, sir.

Q What was the actual hour, 3 or 3:30?

A 3:30.

Q You didn't know before you received any phone call that any customs agents or any police or any authorities had been to the hotel asking about this particular room or this particular baggage or this particular lady?

A No. The manager is usually the one that informed me of this details, and he didn't come in until very late that day, and he was very busy and he didn't have time to tell me about it.

So at the time I received the call I didn't know anything that there was a couple of agents there waiting.

Q At the time you received the call --

A I wasn't aware of what was going on.

Q You didn't know that. Were the agents there waiting when you received the call?

A Yes, I understand they were, yes.

Q Actually in the hotel at the time you received the call?

A I believe they were in the lobby of the hotel, yes.

Q Let me go over this phone call with you again. Am I right in saying that when the call first came in, at least, as far as you were concerned, this was a routine matter and you were not aware that there were any authorities

interested in it; is that right?

A That is correct.

Q So a man came on the phone -- did he speak to you first or was he transferred from somebody else?

A He spoke with the operator first and probably asked for the front desk.

Q Did the man ask about the bags for the lady in room 1815?

A I believe he said, "I am calling in regard to the lady that you have registered in 1815." Because I said 1815 is a vacant room, that I remember very clearly.

Q And did he give you the phone number -- pardon me, did he give you the name of the lady?

A Well, later on in the conversation he gave me the name of John Davis.

Q The name of the lady?

A The name of the lady?

Q The lady in the room, did he say anything about the name Rudner?

A I am not absolutely sure he did. He must have because --

Q You are sure this call was around 1 o'clock?

A I believe so, yes, around then. Lunchtime.

Q Could it have been around 12:30?

A It could have been.

Q Around 12? Sometime between 12 and 1?

A Yes, I believe so.

Q So it could have been as early as 12?

A I don't think so.

Q Could it have been as early as 12:30? I want you to come as close as you can.

A It's possible, yes.

Q After he gave you this information about the room and so on, you glanced at the rack and saw the room was vacant and you had a talk with him about paying the bill?

A Well, when I mentioned the room 1815, you see, the bellboy that was standing next to me, he was the one that put the bag away, so he went like this with the hand to me that he wanted to tell me something, so I covered the phone and asked him.

He said that baggage is in the checkroom because this party didn't show up for several days, and he knew that it was a couple of agents waiting there.

Q He knew?

A He knew that.

Q And you say he told you that?

A He told me that at the time, yes.

Q When I talked to you the other day, did you

recall what you --

When we spoke the other day, did you mention to me anything about the bellboy and him telling you about the agents?

A I believe I did, yes.

Q Didn't you tell me that you thought -- if you don't remember, then tell me you don't remember, I don't want to pressure you -- did you tell me when we spoke on last Thursday night that you thought this phone call was a routine matter and you didn't learn until afterwards, when you spoke to Mr. Steel, that the agents were waiting?

A No. When I received the call, it was a routine matter, I mean, I didn't know anything about this baggage being put away, you see, not until I spoke with the bellboy or the bellboy told me when I knew what really happened.

Q Did you speak to Mr. Steel that day?

A Yes, I believe Mr. Steel came down about that time and I informed him about the telephone conversation, and I believe it was Mr. Steel, the one that called the agents and told them about it.

Q Called the agents?

A I believe so.

Q Do you know what agents Mr. Steel called after you spoke to him, do you happen to know? If you don't know,

you don't. You didn't call the agents or speak to them on the phone, did you?

A No.

Q When did the agents come down, to your knowledge, after the phone call?

A If I recall right, I think they came in to me after the phone call and I was talking to them about the phone call.

Q Mr. Duarte, you say if you recall right. When we spoke just last Thursday, and that is before you spoke again to Mr. Levine, the agent, didn't you tell me that you did not talk to any agents that day but that you first spoke to Mr. Levine the next day?

A No. The next day?

Q Yes, the next day.

THE COURT: The question is not whether it happened, the question is whether you told Mr. Beldock that.

THE WITNESS: No, I don't believe I did tell you that.

Q You have spoken to Agent Levine between the time I spoke to you on last Thursday night and you spoke -- not Thursday, I mean Friday. We spoke last Friday during the day, right?

A Yes.

Q Any questions where I asked before where I may have misstated myself and said Thursday, I meant Friday. Do you understand that?

A I spoke to Agent Levine yesterday, is that what you are asking me?

Q First of all, you and I spoke Friday at the hotel during the day, right?

A Yes.

Q And you spoke to Mr. Fried earlier that day, right?

A Yes.

Q Then while I was with you you called Mr. Fried?

A I called Mr. Fried.

(Continued on next page.)

Q And you talked to him twice, as a matter of fact -- right?

A Yes.

Q I spoke to him once and we reviewed what you told him, what I told him in your presence, what you just told me that day -- right?

A What was that again? I didn't get --

Q Did you speak to Mr. Fried or did I speak to Mr. Fried in your presence on last Friday?

A Yes.

Q About what you had been telling him that day?

A Yes, I spoke to Mr. Fried.

Q But after that you had spoken to Mr. Levine -- right?

A Yesterday I spoke to Mr. Levine.

Q Well, here or at the hotel?

A Here. I was waiting --

Q And did Mr. Levine show you anything, any notes of any sort about the conversation that you supposedly had with me on the phone?

A No.

Q Or with any of the agents?

A No. I asked him if it was -- if he remembered what I had told him that day of the phone call.

Q And did he then tell you what he remembered?

A Yes.

Q What did Mr. Levine say?

A Well, he said -- you know, he -- I said, "What I -- What I remember is this, but I want you to clarify a couple of details for me."

Q Mr. Duarte, I want you to tell me what did Mr. Levine say to you when you were having this conversation yesterday.

A Well, he said I had mentioned the name John Davis to him.

Q John Davis?

A Yes. And he said at that time he called the District Attorney and he gave him the name, and he had the name before the arrest, that the District Attorney had the name before the arrest, you see.

Q That's what Mr. Levine told you yesterday -- right?

A That's correct.

Q So as far as you are concerned that sounds pretty persuasive that you heard the name John Davis on the day before it was made -- right?

A Well, that's right.

Q But when you spoke to me at the hotel on Friday--

now please bear with me and listen carefully, Mr. Duarte --

A Yes.

Q (Continuing) -- and if you don't understand this question please say it -- didn't you tell me the following things: First, that you think the man on the phone gave you his name?

A Yes, I -- I said to you I -- I believed the man that made the call gave me his name. That's right. And then --

Q Did you also tell me that you think that the man on the phone gave a name something like Davis or David, but you were not sure?

A That's right.

Q That's right.

A I said that to you.

Q And I was not the one who suggested that information to you?

A No, no.

Q You came out with that --

A No, no, I even --

Q (Continuing) -- voluntarily; right?

A I even said that to the --

Q Assistant?

A (Continuing) -- District Attorney when he called me earlier. He said, "Do you remember what name they gave you

over the phone?"

I said, "Gee, it's been a long time now; I think it was something like Davis or David."

Q You certainly didn't remember the name John at that time?

A No, at that time I didn't remember the John. But --

Q Wait, Mr. Duarte. You told Mr. Fried the same thing you told me last Friday. Now I want to ask you this: Didn't you also say to me after you -- let me set a preliminary first -- withdrawn.

When I went to the hotel we got the call and you told me what I was just referring to, and then there came a point where you said that you'd like to call Mr. Fried to be sure it was all right. And then I said, "Please call Mr. Fried." In fact, I suggested that at the beginning, right?

A Yes, that's right.

Q And you called Mr. Fried, and he said it was all right. Then we went into a back room, a side room behind the cashier's area, is that right?

A That's right.

Q You invited me in to talk, and then did you tell me this, that you were not sure whether you were given the name Davis over the phone or whether you heard it afterwards; didn't you tell me that?

A At that time I was in doubt, you see.

Q All I want to know: Are you saying yes, you told me that, and at that time you were in doubt -- fair enough?

A I said, "Gee, I'm doubting it now," because you see you said, "Could it be that the name was suggested to you by somebody?" you see. And it had been such a long time since this happened, and I didn't make any notes, I didn't talk to anybody about this. And all of a sudden I -- I said, "Gee, could be that somebody suggested the name to me and I'm saying it now," you see.

Q Fair enough. Did you tell me that you were really not sure last Friday whether you heard the name Davis during the phone call, or the name David during the phone call, or whether you learned about it the next day?

A When you were talking to me then?

Q Yes.

A Well --

Q Isn't -- I just asked you whether that was -- if I'm saying in fairness what you said to me then?

A I was in doubt, yes.

Q Now, did you also tell me that you did hear the name David afterwards, although not on the day -- let me withdraw that, because that might be an unfair question.

Did you also tell me that you heard the name David -- Davis after June 18, 1973 from somebody else, but it was not on June 18th?

If I have not made that clear I will restate it.

A Yes, you --

Q Let me put it this way --

A You're asking me --

Q After June 18th did you hear the name Davis mentioned regarding the phone call that came in on June 18th and the man that --

A It could have been, you know, because the manager when the man was arrested, he knew the name, and it could be that we talked about that later, yes.

Q The manager got identification from this man, right, receipts and so on?

A Yes.

Q Just bear with me a minute.

Are you sure that the man on the phone, whatever name he gave, said, "My name is" -- That's what you said now?

A That's what I think, that's what I believe, yes.

Q And this was sometime between 12:30 and 1 o'clock?

A Yes, more or less.

Q Do you recall whether the man speaking to you

on the phone said anything about the lady or the girl having gone out of town?

A I think that's what he said, yes.

Q That the man would make arrangements to pick up the bags later? That's approximately what he said -- right?

A I think he said, "I'll pick up the bags later."

Q Now I have to press you, Mr. Duarte --

A Go ahead.

Q (Continuing) -- but don't -- just bear with me, about our conversation last Friday.

A Yes.

Q When we were sitting in the back speaking -- speaking, you to me -- and that's the time after you called Mr. Fried and he said it was O.K. -- didn't you tell me that after the phone call you went to the bellboy to see about the bags and then learned that the police were interested, and that you then went and reported to Mr. Steel, who picked up from there and who presumably advised the authorities, words to those effects -- that effect? Didn't you tell me that?

A I could have -- I couldn't have said that because I remember clearly that at the time of the call the bellboy was right in front of me.

Q O.K.

THE COURT: Did you intend to say after the phone call was completed or did you intend to say after you received the phone call?

THE WITNESS: While I was talking on the phone. I was talking on the phone that is right on the desk there.

MR. BELDOCK: Nothing further.

THE COURT: Anything further, Mr. Wall?

MR. WALL: Let me confer with Mr. Beldock a moment.

Q On last Friday when you called Mr. Fried for the second time from your office did I then speak to Mr. Fried?

A Yes, sir.

Q And do you recall me saying to Mr. Fried, repeating to Mr. Fried the substance of what you and I had been talking about?

A No, I don't -- I mean our conversation?

Q Yes, did I say --

A Our conversation was after we spoke to Mr. Fried. I mean about this --

Q The second time you called Mr. Fried from the phone at your desk, do you remember that? Because I wanted Mr. Fried to know what you had said. Do you remember that?

A Oh, yes, yes, that's right.

Q And didn't --

A Yes, yes, you --

Q (Continuing) -- I report to Mr. Fried, I mean say, "Mr. Fried, Mr. Duarte told me the following things"?

A I believe from the desk you called Mr. Fried again, right.

Q Yes, from the desk.

A The first time I called, the second time you called.

Q But that was from your desk in the back after our whole conversation -- right?

A Yes.

Q And then I said to Mr. Fried in effect, "I'd like you to know what Mr. Duarte told me," is that right?

A That's right.

Q And I suggested to him if he wanted to speak to you about it he'd have to speak to you before you left at 3 o'clock, because it was close to the time you left -- right?

A Right.

Q And Mr. Fried didn't want to speak to you at that time?

A I recall that, yes.

THE COURT: Anything further? Mr. Wall?

MR. WALL: Just one moment, your Honor.

CROSS-EXAMINATION

BY MR. WALL:

Q Mr. Duarte, going back to that last question, when you heard Mr. Beldock on the phone with Mr. Fried --

A Yes.

Q (Continuing) -- telling Mr. Fried what you had been talking to him about, did you make any corrections to Mr. Beldock, that, "No, I didn't say that"? Do you understand me?

A No, I don't think I did.

MR. WALL: All right, no further questions.

THE COURT: Mr. Fried, do you have any questions?

MR. FRIED: I have no further questions.

THE COURT: You may step down. Next witness.

Thank you, Mr. Duarte.

(Witness excused.)

MR. FRIED: May this witness be excused, your Honor?

THE COURT: Yes, this witness may be excused.

Leave that, please.

Please call the next witness, Mr. Fried.

MR. FRIED: Mr. Francisco Rudge.

THE COURT: Before you leave the courtroom -- Mr. Duarte, before you leave the courtroom?

MR. DUARTE: Yes.

THE COURT: (Continuing) -- I just looked at the Exhibit 33. This exhibit has 6/13. What does that mean?

MR. DUARTE: That's June the 13th.

THE COURT: Is that the day that --

MR. DUARTE: The party registered.

THE COURT: (Continuing) -- the party registered?

MR. DUARTE: That's right. And --

THE COURT: Does that mean it was before 12 o'clock midnight?

MR. DUARTE: The time when the party registered is here, 11:54 p.m., June the 13th. It's the time stamp. The clock time stamp.

THE COURT: Thank you.

Anything further on the questions I asked?

MR. FRIED: Nothing further.

MR. BELDOCK: May I just ask Mr. Duarte the bill, of course, shows that payment was made on June the 13th?

MR. DUARTE: Yes, let me give you information about the bill here. This is the date of arrival, this is how long the parties had intended to stay. It was up to the 15th. Naturally, the party didn't show up for -- since that date. This is the rate. This is the number of persons, one. This is the address here. And this is the clerk that took -- that took this party in. His name is Mr. Latimer.

And at this time we checked the bill out, and this is the amount that was transferred to city ledger. That later was paid.

MR. MOGULESCU: Your Honor, I ask the Court's leave to be able to sit next to Mr. Rudge at the time he testifies.

THE COURT: Yes. It's with specific instructions. We had an unhappy experience yesterday when Mr. Katz appeared to be discussing answers with the witness. I don't want that.

MR. MOGULESCU: Certainly not.

THE COURT: If the witness feels the answer may tend to incriminate him beyond the scope of this examination or for some other reason feels the privilege is claimed, then he may consult with you. Or if you feel it is then I'll suspend and I'll allow you to consult with him. But I don't want the witness to turn to the lawyer and say, "What should I say?"

MR. MOGULESCU: I certainly wouldn't tell him what to say, your Honor.

THE COURT: All right, the witness may be sworn.

(Continued on next page.)

F R A N C I S C O R U D G E , having been called as a witness, after first being duly Sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION:

BY MR. FRIED:

Q Mr. Rudge, would you tell us, please, what country you are a citizen of?

A Brazil.

Q And will you tell us when you arrived for the first time in the United States?

A In January, 1967.

Q And have you been in the United States as a resident since then?

A No.

Q Can you describe very briefly for us when you came and went from the United States?

A Came during '67, went back to Brazil. In 1968 I came back, and I was on an official visa, and I get my residence in January, 1972.

Q Mr. Rudge, you know what this case involves, is that correct?

A Yes.

Q Are you, or were you a co-defendant in this case?

A Yes.

Q And did you have occasion to plead Guilty to one of the Counts of this Indictment?

A Yes.

Q Will you tell the Court what Count of the Indictment you pled Guilty to?

A Fourth Count.

Q Is that the Count that concerns possession -- aiding and abetting and possession of cocaine on board an aircraft, without declaring it in the manifest?

A Yes.

Q And when you offered to plead Guilty, was there a certain promise made to you from the Government, concerning the dismissal of the other Counts of the Indictment, as well as a prior indictment?

A Yes.

Q Was there any other promise made to you at the time that you pled Guilty concerning sentence or anything else?

A No, but the fact that the prosecution would insert in the Probation Report that I had cooperated with justice.

Q And that was in exchange for your testimony at this trial, is that correct?

A Yes.

Q Mr. Rudge, before we go into some questions, I'd like you to look at the defense table and see if you know any of those persons? Did you know any of those persons prior to the date of your arrest?

A No.

Q I'd like to offer into -- show you Government's Exhibit 1 for identification -- number 1 in evidence, and ask you if you know who those photographs are?

A Yes.

Q Will you tell the Court, please?

A Miss Rosalis Rudner.

Q And what is your relationship, if any, to Miss Rosalis Rudner?

A We were living together.

Q And how long have you known Miss Rosalis Rudner?

A For about more than a year. I'd say three months.

MR. FRIED: I'd like this to be marked as Government Exhibit number 34.

THE CLERK: Four photographs attached to paper, marked Government's Exhibit 34 for identification.

MR. FRIED: I offer this into evidence as Government Exhibit 34.

THE CLERK: So marked.

MR. FRIED: Is that with the consent of the defense?

MR. WALL: With the consent of the defense.

Q Mr. Rudge, I show you Government Exhibit 34, and ask you if you can identify the male individual in the large photograph, in the top photograph on the left, and if you know anybody in the other photographs?

A Yes. Yes.

Q Who are they, please?

A The person that I know?

Q Yes.

A George Morao.

Q And which photograph is the photograph of George Morao? -- Judge, could I borrow your grease pencil, and we could check it? I left mine upstairs.

THE COURT: I'll give you the purple crayon. Suppose you put "G.M." at the photograph which you say if George Morao.

Q And can you tell us if you know who the woman is in this photograph in the top right of Government Exhibit 34?

THE COURT: Put it in the margin portion.

Q Will you tell the Court who that is, please?

A Yes, Miss Theresa Costa.

Q Tell us what relation, if there is any, that you know of, between George Morao and Theresa Costa.

A Yes, they were living together.

Q Thank you. Mr. Rudge, did you have -- Would you tell us by -- what your occupation is?

A I'm a movie maker.

Q Did you have occasion in the spring of 1973 to travel to South America?

A Yes.

Q Did you travel to South America because of your movie making?

A Yes, sir.

Q Will you tell the Court about that visit?

A I had a ticket to Brazil that could be broken in stop-overs, and I decided to stop over in two countries, choose a location.

Q Did you stop in Bolivia on that trip?

A Yes.

Q Did you stop in Bolivia on that trip?

A Yes.

Q And while you were in Bolivia, did you have occasion to learn anything about cocaine?

A Yes.

Q Will you tell the Court what you learned at that time?

A That it would be very easy to buy it.

Q Cocaine this is?

A Yes.

Q Did you then return from that trip to the United States?

A I went to Brazil. I was there for a while. And then I -- Yes, I returned.

Q During the time that you were in Bolivia, had you made any definite arrangements to purchase cocaine?

A No.

Q Did you learn about the price of cocaine in South America, in Bolivia?

A Yes.

Q Will you tell us what -- how much cocaine would have cost if it was to be purchased?

A About $2500 a kilo.

Q You say you returned to New York following that trip after you had dropped off in Brazil, is that correct? You came back to New York?

A Yes.

Q When you came back to New York, did you have occasion to meet with the man whom you identified in Govern-

ment Exhibit 34 as George Morao?

A Yes.

THE COURT: How do you spell Morao?

THE WITNESS: M-o-r-a-o. There is a mark for nasal sound of the "a".

Q Did you have a conversation after you returned to New York with Mr. Morao about your trip to South America?

A Yes.

Q Where did that conversation take place?

A I think at my hotel room.

Q And where was that hotel room?

A On 23 East 10th Street.

Q Would you tell us the name of the hotel, please?

A Albert.

Q And what room were you staying in?

A 255.

Q And would you tell us, could that have been 275?

A Excuse me?

Q I show you -- I'd like to offer this as Government Exhibit 35 for identification.

A THE CLERK: Document marked Government Exhibit 35 for identification.

Q Mr. Rudge, I show you Government Exhibit 35 for identification, and ask you if that helps you recall the

number of the room that you were staying in in that hotel?

A Sorry, 275.

Q Thank you. During the time that you had this conversation with Mr. Morao in your room, was anybody else present?

A No.

Q Can you tell us, if you recall, approximately when this took place in terms of the time of the year or the month?

A About the end of February.

Q Would you tell us what was said by you, if anything, and what, if anything, Mr. Morao stated?

A How easy it was -- I -- I said -- to buy cocaine in Bolivia. And George would say how easy it was to sell it in New York.

Q Was there anything else discussed in the conversation?

A Yes, I asked him, you know, about, you know, the possibility of selling it, and he would say that it wouldn't be any problem in selling it.

Q Was you intention, then, whether he could sell it for you, or your selling it yourself?

A Well, I had a person that was telling me that he knew a way of disposing of it.

Q Did you indicate to him at that time anything concerning when you might, if at all, bring in cocaine, into the United States?

A Not at that time. At that time I wasn't thinking about it. We had a conversation, I think, in May, or some time.

Q Well, would you then next turn to the next conversation that you had with Mr. George Morao concerning cocaine, and tell us when that took place?

A About the beginning of May or in May.

Q Will you tell us where that took place?

A At my hotel room.

Q Is this again in the Hotel Albert?

A Yes, same room.

Q This is the same room? And who else was present, if anybody, at that time?

A Miss Rudner.

Q Would you tell us as best as you recall what you said, if anything, and what, if anything, was said by George Morao or Miss Rudner?

A Yes, that I was thinking about doing it, and if I was to do it, I would do it at the beginning of June, because Miss Rudner didn't want to do anything in July, or after July.

Q Why didn't she want to do anything after July?

A Some superstitious thing with --

Q Superstition?

A Yes.

Q Can you tell us, then, would you please relate the conversation, telling us just as best you recall what you said, if anything, and what was said by these other persons, these other persons being Mr. Morao and Miss Rosalis Rudner?

A Yes. Well, I said that I was thinking about it, and she said that we shouldn't do it, because we shouldn't do anything that was risky under, you know -- at this time.

Q What, if anything, at this time did Mr. Morao say?

A He was just listening.

Q Did a time then come when you made a decision with Miss Rudner to do this?

A Yes, I said that, "Well, we can do it at the beginning of June."

Q Will you tell us what happened, if anything?

A Yes. Like, we start planning it. I mean, Miss -- me and Miss Rudner. And by the end of May, I went to London.

Q When you went to London, whom did you meet, if anybody, in London?

A Miss Tambini and Mr. Albuquerque.

Q And this is the end of May, 1973?

A Yes.

Q Did you have a conversation with them concerning this incident?

A Yes.

(continued on next page.)

BS fls

Q Would you relate to the Court as best as you recall, first where this conversation took place?

A We went out, we were living with other people, so we went out in the car, and then in the park we had a meeting in the park, and I think it was there.

Q Was there anybody else present besides you, Miss Rudner, and Mr. Albuquerque?

A No.

Q Will you tell the Court as west as you recall what was said by you, if anything, at this conversation, and what, if anything, was said by either Miss Rudner -- excuse me, Miss Tambini, or Mr. Albuquerque?

A Well, Mr. Albuquerque wanted me to help him go back to Brazil where he intended to be placed under mental treatment.

Q Why did he want to go there?

A Because he was, according to what he said, in very bad shape.

Q Have long have you known Mr. Albuquerque?

A About 25 years.

Q During that time, have you known of Mr. Albuquerque being previously committed to a mental institution?

A Twice.

Q Would you then continue tell us the story of what

you recall as being said at this point?

A Well, I said that maybe if he would just change, go to another place, rest, stop working, he could feel better.

And Miss Tambini somehow was interested in the proposition that I had to make to them.

Q What proposition was that?

A That she would help bring in the cocaine.

Q Specificially, what had you asked her, if anything, to do?

A Bring it from Buenos Aires to New York.

Q And this took place during this conversation you are telling us about?

A Yes.

Q Did a time come when you then returned to the United States?

A Yes.

Q Do you recall approximately when it was when you returned to the United States?

A Either the 30th or the 31st of May.

Q At this time --

A I am not sure.

Q At this time, when you returned to the United States, did you have occasion to meet with George Morao?

A He wasn't here.

Q He was not in New York?

A He wasn't in New York.

Q Did a time come then when Miss Tambini and Mr. Albuquerque arrived in New York?

A Yes.

Q Can you tell us if you had a further conversation with anybody concerning the cocaine from South America?

A No. We were going out, the four of us, but even Mr. Albuquerque was not present at the conversation we had, just the three of us.

Q This is you, Miss Tambini and Miss Rudner?

A Yes.

Q Will you tell us as best as you recall where these conversations between the three of you took place?

A At my hotel room, and at the restaurant.

Q This is in late May or in the beginning of June, 1973?

A The beginning of June.

Q Tell us as best as you recall what was said by you, if anything, and what, if anything, was said by Miss Tambini or Miss Rudner?

A That I would take care of part -- you know, the purchase, and Miss Rudner would take care of the transportation of it.

Q Did a time come when tickets were obtained for Miss Rudner to fly to Argentina -- Miss Rudner to fly to

Bolivia, and for Miss Tambini to fly to Argentina?

A Yes. I was not present at these arrangements.

Q But tickets were to be obtained, purchased?

A Yes.

Q Were tickets purchased for you to fly there also to Bolivia?

A Yes.

Q Could you tell us now whether or not you actually left New York City for Bolivia -- did you leave New York for Bolivia?

A Yes, on June, I think, 6th, I'm not sure, not quite sure.

Q Do you recall what airline you flew on?

A Lufthansa -- No, Braniff.

Q Do you recall whether Miss Rosalis left for Bolivia?

A She left the same day I did on the Lufthansa flight.

Q Do you know whether or not Miss Tambini went to Argentina?

A She left after us -- I mean, she was supposed to leave after us.

Q Did you then in Bolivia obtain the cocaine with Miss Rudner?

A No, I did the purchase. I just delivered it to her.

Q Do you know who purchased the cocaine in Bolivia?

A I did.

Q You did. Can you tell us how much you gave for that cocaine?

A $2500 a ki.

Q How many kilos were purchased?

A Two kilos.

Q Did you return yourself to New York City?

A Yes.

Q Did you return alone to New York City?

A Yes.

Q When you returned to New York City, can you tell us the day that you came back?

A I entered the States in San Juan, I think, I'm not sure, it was the 13th.

Q When did you return, if you recall, to New York City?

A It was just a connection flight, immediately. I was here in the morning of the 14th.

Q Did you learn that evening -- That evening, did Miss Rosalis come to your hotel room, Miss Rosalis Rudner?

A Yes.

Q Was she carrying suitcases when she came to your room?

A Yes.

MR. BELDOCK: What eveing are you talking about, Mr. Fried?

MR. FRIED: The evening of the 13th of June, 1973.

MR. BELDOCK: The testimony was that he arrived the morning of the 14th.

THE COURT: I heard the testimony.

MR. BELDOCK: If I heard it right.

THE COURT: We can have it read back, Mr. Beldock, or you can examine the witness on it.

MR. BELDOCK: I was not trying to interfere, I was trying to help.

THE COURT: Did you say that you went to San Juan in the morning of the 13th?

THE WITNESS: It was my mistake. I came here in New York at the morning of the 13th.

THE COURT: Yes. Did you say you came into San Juan in the morning, and then it was a connecting flight, and then you came to New York?

THE WITNESS: The night of the 12th, yes. I am not quite sure about the days.

THE COURT: So the morning of the 13th?

THE WITNESS: Yes.

Q You arrived in New York City on June 13, 1973?

A At the mowning -- I arrived in New York at the morning of the day I was arrested.

MR. FRIED: For the purposes of the record --

Q You were arrested on June 13, 1973.

A Then that's it, on June 13th, in the morning, I was in New York.

MR. FRIED: I would like these two suitcases marked as Government Exhibits.

THE CLERK: 36 and 37, marked for identification.

****

(So marked.)

MR. FRIED: Do you have any objection to these going into evidence?

MR. WALL: No objection.

MR. BELDOCK: No objection.

MR. FRIED: I offer these into evidence as Government Exhibits 36 and 37.

THE COURT: They may be marked with the consent of the defendants.

THE CLERK: So marked in evidence.

****

(So marked.)

THE COURT: Aren't these the same bags

that were seized at the Paramount Hotel?

MR. FRIED: That's correct.

THE COURT: Miss Tambini could not identify them.

MR. FRIED: She could not.

THE COURT: All right.

BY MR. FRIED:

Q Mr. Rudge, I show you Government Exhibits 36 and 37, and ask you if you can tell us, if you know, what those are?

A Yes, these are my suitcases.

Q Are those the suitcases -- Did you see those suitcases on the evening of June 13th, 1973?

A Yes.

Q Who was carrying them when you saw them?

A Miss Rudner.

Q Are these the suitcases -- Did she come to your room that evening?

A With one of them, and the other one she got the few clothes that she had in the room, she got a few clothes.

Q You stated that Miss Rudner came to your room on the evening of June 13, is that correct?

A Yes.

THE COURT: Was that at the Albert Hotel?

THE WITNESS: Yes.

Q Is this room 275 at the Albert Hotel?

A 275.

Q Would you tell us if you had any conversation with her concerning the cocaine importation?

A She was very nervous --

Q Did you have a conversation with her?

A Yes.

Q Was there anybody else present?

A No, not at the time she came in.

Q Would you tell us what, if anything, you said, and what, if anything, she said?

A She was very nervous. She said that she didn't know what happened, because according to what was planned, she was supposed to go through Customs after Miss Tambini so she could see if anything was going to happen, but her line was moving too fast, and she had to go through first. So she couldn't see.

She was waiting outside for a while, and Miss Tambini never appeared. So she went away. She said that she was getting in a car, she thought she saw Miss Tambini standing on the cab line. She stopped the car, went back, looked around, didn't see anybody, so she came to the hotel.

Q Did a time come when she left the hotel?

A Yes.

Q Do you know where she went?

A Yes.

Q Could you tell us, please?

A I took her down, put her in a cab, and sent her to the Paramount Hotel.

Q Did you later that evening have an occasion to talk with George Morao?

A Yes.

Q Can you tell us where you saw him?

A At the hotel.

Q This is again the Hotel Albert?

A Yes.

Q Was there anybody else present at the time you were talking with him?

A No.

Q Would you tell us what, if anything, you said, and what, if anything, he said to you?

A MR. BELDOCK: I object.

THE COURT: It is the same objection. I assume you have --

MR. BELDOCK: Yes, but I feel on the evidence specifically to now, your Honor might rule on this, or at least, I would like your Honor

to know that I object specifically, particularly to this conversation, in view of the evidence before your Honor up until now.

There has been no establishment, as I can see it, and I ask your Honor to take it under advisement, there is no establishment, as I can see it, of a Conspiracy between Morao and Rudge.

You have heard the testimony, you have heard all the testimony up until now.

THE COURT: I thought I heard this witness testify that Mr. Morao said, "If it's easy to bring in, I can sell it easily enough."

MR. BELDOCK: That's what you heard, your Honor. That is just my point.

THE COURT: Objection overruled on the grounds stated. Of course, it is in no way chargeable to your client at this point; none of this is chargeable against either of the defendants.

Q Would you please answer the question?

A Can you repeat it, please?

Q Yes. What, if anything, was said by you, and what was said by Mr. Morao at this time, which is in the Albert Hotel, June 13, 1973, after you put Miss Rosalis Rudner in the

taxi and sent her to the Hotel Paramount?

A Well, I told him that everything was very confused, and that -- I told him that there was some coke coming in, that there was a possibility that the girl had been arrested, I wasn't sure at the time, that I had sent Miss Rudner to the Albert Hotel --

THE COURT: You mean to the Paramount Hotel?

THE WITNESS: To the Paramount Hotel, sorry, and -- That was it.

THE COURT: Was this conversation on the 13th, you say?

THE WITNESS: Yes. About two hours before I was arrested.

THE COURT: What time were you arrested?

THE WITNESS: Around midnight, quarter to 12:00.

Q Did you know what, if anything, was in these suitcases that Miss Rudner carried into the hotel, into the Hotel Albert; did you know what she had in her suitcases?

A Her clothes.

Q Do you know if there was any cocaine in that suitcase?

A No, I don't.

Q By the way, you stated earlier that you were a photographer. Did Miss Rudner help you at all in your photography work?

A Yes.

THE COURT: May I have that question?

(Question read.)

Q Mr. Rudge, did you ever see Mr. George Morao again after that conversation?

A No.

Q Did you ever see Miss Rosalis Rudner again after that conversation?

A No.

MR. FRIED: I have no further questions.

THE COURT: Did you ever talk with her on the telephone, or receive any communication from her after she left?

THE WITNESS: None at all.

THE COURT: Nothing at all?

THE WITNESS: No.

THE COURT: All right, Mr. Beldock.

MR. BELDOCK: I would like a minute or two to consult with Mr. Wall. I don't expect a long examination, and I would like to use that time to cut it down.

THE COURT: We will have a short recess.

(Recess.)

GR fls (continued on next page.)

GR/td 4/1

CROSS EXAMINATION

BY MR. BELDOCK:

Q Mr. Rudge, you told Mr. Fried you did not know either of these defendants prior to your arrest. That is, either Mr. Freeman or Mr. Ornitz. Had you ever heard their names before?

A No.

MR. BELDOCK: No questions.

THE COURT: Anything further?

MR. WALL: Yes. Just a question or two.

CROSS EXAMINATION

BY MR. WALL:

Q Mr. Rudge, it was part of the plan, was it not, for Mr. Rudner to accompany Miss Tombini on the flight from Buenos Aires back to New York; am I correct?

A Yes.

Q She was to be on that same flight?

A Yes.

Q Was it part of the plan, that she, too, should carry in her luggage, any of the cocaine which was purchased in Bolivia?

A No.

Q She was to be the lookout; was she not?

A Yes.

Q And as far as the plan went, all of the

cocaine that you had delivered, or that Miss Rudner had delivered to her in Buenos Aires, was to be taken by Miss Tombini in her luggage?

A Yes.

MR. WALL: No further questions.

Thank you.

MR. FRIED: I have no further questions.

THE COURT: You may step down.

MR. FRIED: Your Honor, I'll have to call upstairs. I didn't anticipate this. There is a witness waiting in my office. I apologize for this delay.

The Government's next witness will be Mr. David Duffy.

I will, at this time, turn over 3500 material.

Your Honor, may Mr. Rudge be excused permanently, to return to West Street?

THE COURT: There is no reason to keep him, is there?

MR. BELDOCK: No.

MR. WALL: No.

THE MARSHAL: Thank you very much.

MR. FRIED: This is a statement of -- taken from the witness David Duffy by Agents Mike Levine and Jay Silvestro.

THE CLERK: So marked as Government's Exhibit 38 for identification.

(So marked.)

MR. FRIED: And these are Mr. David Duffy's Grand Jury minutes of July 20th.

THE CLERK: So marked as Government's Exhibit 39 for identification.

(So marked.)

MR. FRIED: One page statement.

MR. BELDOCK: What's the date of this statement?

MR. FRIED: You'll have to ask Mr. Levine. I believe I received this from him the next day or two days later.

MR. BELDOCK: Can you just give us a reference date? The next day or two days later.

MR. FRIED: Mr. Levine will have to tell you. It's apparently not dated.

MR. BELDOCK: That's right.

MR. FRIED: And you'll have to ask Mr. Levine when he comes in. I just don't know. And the bottom photocopy said on 6/13, the night of the arrest, two calls were made to Duffy from --

MR. BELDOCK: Okay.

MR. FRIED: These copies of the Grand Jury minutes, I turn over.

D A V I D D U F F Y , called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FRIED:

Q Would you please state your name loudly and clearly?

A My name is David Duffy.

Q And will you tell us what your address is?

A My address is 231 West 16th Street, Manhattan.

Q Mr. Duffy, how old are you?

A 27.

Q And would you tell us your occupation?

A Carpenter most of the time, and astrologer part of the time.

Q Do you know any of the defendants -- any of the persons sitting at that defense table?

A I have met Mr. Freeman.

Q Would you identify him, if you can?

A Stan Freeman. The gentleman sitting in the middle, on the right hand side of the table, to the right.

THE COURT: Let the record show the witness

pointed out the defendant Stan Freeman.

Q Mr. Duffy, do you know a manby the name of GeorgeMourao?

A Yes.

Q How long have you knowm him?

A I met him in early November, approximately last year, and knew him until sometime in June, this past year.

Q Did you know his wife?

A Yes.

Q Do you know what her name is?

A I know what most of it is. She's got about a dozen names. But basically it's Theresa -- Terezihna Costa. She has got a whole bunch of middle names.

Q I would like to show you Government's Exhibit 34, and ask you if you can recognize any of the persons in that Exhibit?

A Yes. In the upper right hand corner is a picture of Theresa Costa. In the upper left hand corner is a picture of George Mourao. In the bottom left is a picture of George Mourao. And the bottom right is Theresa Costa standing, George Mourao sitting, and his baby on his knee.

Q Now, on some of those photographs appears the initials in red crayon "GM." Are those on top of George Morao?

A Yes.

Q I now show you Government Exhibit No. 1 for identification and ask you if you know who that is?

A Yes. Rosalys Rudner, all four shots.

Q As a preliminary question, Mr. Duffy, do you know -- have you eve met a Marilene Tombini?

A No.

Q A Francisco Rudge?

A No.

Q Or a Hermano Albuquerque?

A No.

Q Directing your attention, if you will, to June, 1973, did you have occasion to meet with -- let the record indicate that the witness has taken a calendar, pocket calendar out to aid his recollection.

Did you have occasion to meet with George and Theresa-- Theresa and their baby?

A On June 19th?

Q No. In June?

A In June, yes.

Q Did you accompany them to an attorney's office?

A Yes, several.

Q Did you accompany them to an attorney by the name of Nick Patero?

A Yes.

Q Could you tell us the purpose of that trip?

A Yes. Sometime between the thirteenth of April, and the first of May of this year, Theresa left the United States with her baby to go down to Brazil to show the child to her parents who live in Brazil.

There was some difficulty with her returning to the country because she had filed an application for a citizenship, a residence here. I am not sure exactly, but because of that, she had to stay out of the country for a couple of years because of the waiting period, and was not eligible for a tourist visa, so when she came back with the baby, in, I guess, the end of the first week of June, beginning of the second week of June, she was supposed to have an immigration hearing, to determine whether or not she would be allowed to enter the country and stay in the country, and, if so, for what period of time.

Q And you accompanied -- you went to this attorney's office with them?

A Yes.

Q Where did you meet them on that -- I am sorry. Withdrawn.

Did you later that day, see George again?

A Yes.

Q Thisis on June 13?

A Yes.

Q 1973?

Can you tell us when you saw him?

A Midnight, give or take an hour. Eleven o'clock, twelve o'clock at night.

Q The evening?

A On the night of the thirteenth.

Q The night of the thirteenth?

A Yes.

Q Where did you see him?

A He came over to my house.

Q Who else was present at the time that you spoke with him?

A Well, my old lady was there, but I don't really think she was present.

Q Can you tell us what, if anything, was discussed?

A Yes. He told me that a friend of his had been arrested at Kennedy Airport, with some cocaine, and would I help him get hold of a lawyer for him.

Q And what then did you do, if anything?

A I telephoned a lawyer by the name of Jonathan Lubell at his home in Norwalk, Connecticut. He's an old personal friend of mine, to ask him if he could refer a criminal lawyer to me for George, because he's a Civil Liberties lawyer, and

this was sort of out of his area of interest. But he was the only person I could think of that I could disturb in the middle of the night.

So I called him. He referred us to a man named Frederick Cohen.

Q Is that the Frederick Cohen, who you later learned is the law partner of Messrs. Lefcourt, Katz, and Brennan?

A Yes.

Q When you, at this time, learned from Mr. Morao that a friend of his had been, as you said, busted at the airport for cocaine, what else, if anything, did you say?

A That was about it, that night.

Q Did you then attempt to -- what then next -- what next did you do, if anything?

A Then -- well, John Lubell did not have Fred Cohen's home telephone number, suggested I look it up in the telephone book. Went through all the F's and all the Frederick Cohens in the telephone book and woke up about a dozen people, none of whom were the right Fred Cohen.

And so George took down the guy's name, and John's office number and split, left.

Q Did a time come when you again -- when was the next time that you met Mr. Morao?

A The following morning, when I picked up Theresa to take

her down to Patero's office to get a letter of apology to the Immigration Department, because he was unable to appear at her hearing and to request a postponement until such time as she could be represented by counsel at the hearing.

Q Where did you pick up Miss Theresa Costa?

A At Stan Freeman's house.

Q Could you tell us, if you recall, what time this was?

A '61 -- pardon? It was about 11, 11:30 in the morning.

Q Could you tell us where Mr. Freeman's house is located?

A 61 and a half I think, Perry Street.

Q Could you tell us how you went there that day?

A Taxi.

Q Did you have any trouble locating the house?

A Yes. George had given me a wrong number. Actually, he had given me a wrong street name, too, and I went chasing around with the taxicab for a while, and then finally found the right number and found out where it was, ran in, picked Theresa up and went down to the Immigration hearing.

Q Is there any question in your mind that it was that day that you had trouble locating that house by taxi?

A No, there is no question in my mind, because that was the first time I went to the house. After that, I wouldn't

have had any difficulty locating it.

Q Did you, at one time, believe that there may have been another --

MR. BELDOCK: I object.

THE COURT: Sustained as to form.

Q Had you earlier recalled on a different occasion that you had trouble locating --

MR. BELDOCK: I object.

THE COURT: I will have the full question.

Q --that you had trouble locating the Freeman house on a different date?

THE COURT: I will allow that.

A Yes. I got the chronology of all -- a lot of these events fairly well-scrambled for a while, because I didn't realize that I was supposed to remember all of this stuff. And so what happened one day or what happened the next day, I -- I did not have exactly right during previous conversations with United States Attorneys.

THE COURT: Are you talking about a statement you gave someone, where --

THE WITNESS: In the conversation, in the first conversations I had with Mr. Fried.

THE COURT: No. I am going to strike that out.

THE WITNESS: The agents and the Grand Jury

minutes.

THE COURT: I did not understand that to be the question.

I thought the question was, did you have a problem finding it, not did you tell someone a different story. Objection sustained. Strike out that answer.

MR. BELDOCK: If your Honor pleases, I would withdraw my objection in view of the statements that he made. Otherwise I'd elicit them on cross.

THE COURT: Now you are withdrawing your objection?

MR. BELDOCK: I withdraw it, Judge, yes. I'd like the answer to stand.

THE COURT: All right. Let the answer stand. Go ahead.

(Continued on next page.)

Q On the morning of the 14th, when you went to Mr. Freeman's house to pick Miss Teresa Costa up, who was present, if you recall, at that time?

A George Morao, Teresa Costa, her baby and a young woman who I later found out was Rosalys Rudner.

Q Is this the person who you've identified?

A Yes.

Q Government's Exhibit No. 1?

Did you have any conversation at that time with the defendant Mr. Freeman?

A No. I didn't see him.

Q Did you have any conversation at that time with George Morao?

A Yes.

Q Can you tell us what that conversation was about?

A No. I know I talked to him but basically I was just trying to get Teresa and all the papers that she needed.

MR. WALL: Excuse me. I'm going to object to this, your Honor, on the ground that there is no foundation yet laid to show that this conversation is admissible as in furtherance of the conspiracy to import cocaine.

THE COURT: Well, I will overrule it

only to show the relationship between the parties, not for the purpose of bringing it within the objectives of the conspiracy.

I think the relationship that the Government claims the parties bear to each other is always pertinent.

This is, if anything, outside the specific issues charged in the indictment, but just like we ask questions, how long did so and so know so and so, you may ask, well, you met, and it wasn't for criminal purposes. You met for immigration purposes.

I will allow it.

MR. WALL: All right.

A (Continuing) So I guess the answer is yes, at that time I did speak to George Morao but it had nothing to do with any matter pertaining to this action now.

Q Did you then accompany Miss Costa to the Immigration hearing?

A Yes, I did.

Q And was that Immigration hearing postponed?

A Until the 18th.

Q Is that the 18th of June?

A 18th of June 1973, yes.

Q Did you later meet George Morao on the same day?

A Yes, I did.

Q Do you recall where you met him?

A At the offices of Lefcourt, Katz & Brennan.

Q Do you recall who was present at that time?

A Well, when I first got there he was talking -- he was in Sandy Katz' office talking with Sandy. There were a number of people running in and out of the place. I don't really know exactly who they are. I don't believe that I saw Fred Cohn or Gerry Lefcourt on that day. I know I didn't see Gerry Lefcourt on that day. I don't think I saw Fred Cohn on that day.

Q Directing your attention specifically to the incident involved in this case, did Mr. Morao state anything to you concerning the cocaine importation or the arrest of his friend at the airport?

A That he was acquainted with these people, that they were -- that they were fellow Brazilians, that although he knew that the -- that there was planned -- planned to smuggle cocaine into the country, he did not have any personal or financial involvement in the thing. He was just privy to the gossip about it as it was going -- as it was happening because he was a friend of theirs.

Q Did you have an opportunity on the next day,

on June 15th, 1973, to again meet George Morao?

A Yes.

Q And can you tell us where that meeting took place?

A That meeting took place in Lefcourt's offices, also.

Q Was there any further conversation concerning -- withdrawn.

Who was present at this time?

A At this time, Sandy Katz, Fred Cohn, Gerry Lefcourt and a slew of secretaries were all coming in and out all the time, but basically it was the three -- the three lawyers whom I just mentioned, George Morao and myself.

Q At this time was there any further statement by Mr. Morao concerning the cocaine that had come in?

A We had -- we had read, or I had read -- we had all read at that time the charges that had been brought against her -- against Marilene Tambini and the statement or confession, whatever, that she had made.

Q Well, if you don't -- I'm -- if you don't understand my question --

A No, I don't.

Q Let me repeat it.

Specifically, was there any mention by Mr. Morao at this time concerning any interest he may or may not have had?

A Yes, that he did not -- that he did not have any interest in the smuggling operation, in any financial or physical way, just that -- just that these people were friends of his. They were in trouble and that he was trying to raise money for them but he was of -- he stated that he was himself in no way a part of the operation.

BY MR. FRIED:

Q Was there any conversation between you and Mr. Morao concerning what, if anything, might have happened to this cocaine if it came into America?

MR. BELDOCK: I object to that, Judge, because he's -- clearly has to do with something else now.

THE COURT: Yes. I sustain objection to that. That could not possibly bind the conspirators, what he said about what was going to happen to it. This is cocaine that was already seized. It certainly could not be in furtherance of the conspiracy.

I will allow any understanding concerning the defense of any of the so-called conspirators because at times the object of a conspiracy is to retain counsel, defend charges brought against co-conspirators.

But I do not think that what he believed the intended disposition of the cocaine would have been, except for the seizure -- I don't think it promotes any objectives of the conspiracy.

Q Mr. Duffy, did Mr. Morao at this meeting state anything -- what, if anything, did Mr. Morao state at this meeting about his understanding, if any, as to this cocaine?

MR. BELDOCK: The same objection.

THE COURT: Objection sustained.

Q Mr. Duffy, you stated that Mr. Morao mentioned he had no financial investment in this; is that correct?

A That is correct. Nor had he had any prior knowledge to the smuggling operation, until after it had already begun to take place. While -- he learned of it after -- after it had been initiated, while it was in progress.

He also -- he also said that had -- or had -- if the -- if the cocaine had come through Customs without being arrested, he might or might not have had the option to sell an amount of that. I think that's the point you're trying to make.

MR. WALL: I think that was the point Mr. Fried was trying to make, so I move to strike it.

THE COURT: Strike it out.

MR. WALL: Thank you, sir.

MR. FRIED: Your Honor, I am not sure --

THE COURT: His statements made at this time might bind him, might prove he was a member of the conspiracy, but are not binding on any other parties who are claimed to be members in the conspiracy. That in no way promotes the objectives of the conspiracy. It is just an admission against Morao, who isn't here.

MR. FRIED: Your Honor, I -- outside of the hearing, perhaps, of this witness, although there is not a jury here, I'd like to argue this point. I think that's very relevant to the entire -- the case, the statement by Mr. Morao that he had an option to purchase -- an option to sell this cocaine if it was coming -- if it came through Customs is -- connects with the earlier statement by Mr. Rudge that the -- he had arranged with -- had told Mr. Morao that the stuff would be coming -- the cocaine would be coming in June and that if it came in, he would be able to dispose of it for him.

MR. BELDOCK: I object. That is not the

testimony.

MR. WALL: Not the testimony. The testimony was in the passive voice, not in the active. The testimony from Rudge is that Morao told him in a conversation, which apparently was simply talking about cocaine in general, that it is easy to dispose of, not that I will dispose of it for you or that I will do it easily, but simply that in New York City cocaine is easily sold. There is no testimony --

MR. FRIED: That's not correct, your Honor. In fact, you rephrased the question, your Honor, to make that more -- one time, and Mr. Morao -- Mr. Rudge testified that the understanding was that if he -- that George Morao could sell the cocaine for him.

THE COURT: I will not allow statements by Mr. Morao as to what would have happened to the cocaine had it come in because it in no way can promote the objectives of the conspiracy.

It can be only used if Mr. Morao would be here -- it would be admissible against him to prove that he was a member of the conspiracy.

It is an admission. It is not a statement.

It may be a statement made during the term of the conspiracy but not for the purpose of promoting the objectives of the conspiracy. It can only be used for the limited purpose, as an admission against Mr. Morao. Nothing else.

Proceed.

MR. FRIED: Your Honor, I would -- before I proceed, reserve -- request that I be allowed to reserve the --

THE COURT: Continue, Mr. Fried. I do not permit continuous re-argument. It only extends the trial and does you no good at all.

BY MR. FRIED:

Q That evening, on June 15, did you have occasion to meet with George Morao?

A The evening of the 15th?

Q That's correct.

A The evening, yes.

Q And can you tell us when this occurred?

A During the evening, maybe between 8 and 10 o'clock. Something like that. It wasn't -- it wasn't particularly late, but it was after dark.

Q Where did this take place?

A At my house, also.

Q Was there anybody else present at this time?

A Yes, but not in the same part of the house as George and I were.

Q Will you tell us what, if anything, you stated and what, if anything, Mr. Morao stated?

MR. BELDOCK: Your Honor, I'd like to object at this time, on the general ground that -- I don't know what he's going to say. I have no idea.

THE COURT: That is a pretty good ground, so suppose I hear it and then rule on it.

MR. BELDOCK: That the conspiracy was completed on June 13th.

THE COURT: The term of the conspiracy is not terminated, as a matter of law, because of the arrest.

MR. BELDOCK: I realize that, Judge.

THE COURT: There may be other transactions contemplated. There may be other discussions. The Government says the conspiracy existed to a date on or about June 18 or June 19. I will take any testimony that contemplated

any other cocaine deals or any other drug deals.

MR. WALL: May I add just one observation to Mr. Beldock's objection? I don't think it's our position that an arrest automatically terminates a conspiracy. But when the purpose of the conspiracy is frustrated by the seizure of the objectof the conspiracy, then that conspiracy terminates.

THE COURT: It is not alleged here that the conspiracy was to import two kilograms of cocaine on June 13th. It is not that limited.

Conspiracy is to engage -- it was to import a quantity of cocaine, to distribute cocaine during the period May 15, 1973 and June 18, 1973.

MR. FRIED: Your Honor, there is a third paragraph in that conspiracy, the third purpose of the conspiracy.

THE COURT: The two kilos of cocaine aren't even mentioned in the conspiracy count, you know, not that it would matter.

MR. WALL: Well, wait a second, your Honor. I think it would matter, not necessarily the specification of the amount of cocaine. You will

notice that the substantive counts in this indictment all refer to the five pounds of cocaine, and I suggest to your Honor that the evidence before you shows that it is only that cocaine which was considered by the Grand Jury because the item seized in the Paramount Hotel had not been analyzed as cocaine until approximately August 14th, more than two weeks after the indictment was handed down.

THE COURT: Any evidence that the Government gets at any time before the Government rests in its case that will support the charge I will allow.

MR. WALL: Yes, sir.

My point is a different one. I agree with you on that.

I am saying that the charge in this case, however, whether it be the conspiracy count or the three substantive counts, must be dealing, it seems to me, with that five pounds of cocaine, rather than other cocaine, simply because there was no evidence before the Grand Jury, as is deducible by the evidence now before you, that the Grand Jury knew the cocaine was found in the

bags in the Paramount Hotel. There had not yet been a chemical analysis of it.

THE COURT: I am sorry, but I would agree with you on the substantive counts but I cannot agree with you on the conspiracy count.

MR. WALL: My only point, sir, is that since the Grand Jury could not have known that there was any other cocaine in this case, its reference to a quantity of cocaine in Count One had to be the five pounds, and merely because the typist or whoever drafted the indictment didn't include it does not mean that there was anything else that the Grand Jury could possibly have considered.

(Continued on next page.)

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THE COURT: Well, I don't know that an an indictment is limited by the proof before the Grand Jury. The defendants were called to answer a charge on the indictment.

MR. WALL: Your Honor --

THE COURT: Count one does not say "Conspiracy to bring in two kilograms of cocaine." It doesn't say that at all.

MR. WALL: But, sir, that has to be the fact. Otherwise a man could be convicted on the basis of a charge never levelled against him by the Grand Jury which heard the case.

THE COURT: There is a way of limiting it. That's what we call a bill of particulars.

MR. WALL: All I'm saying is that it's the Government which authorizes the bill of particulars, but it is the Grand Jury which authorizes the indictment. And a man may not be convicted of a crime which the Grand Jury didn't accuse him of.

THE COURT: I'd rather read United States against Costello in the light of the concurring opinion there, and I think of Mr. Justice Stewart where he in effect said that once you go to trial on an indictment you can't go behind it.

That's it, I am agreeing with that, but I'm saying --

THE COURT: All right. You don't have to refer back to the testimony before the Grand Jury.

MR. WALL: Well, perhaps we ought to defer this argument for later. I just simply wanted to make my position clear.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. FRIED:

Q Mr. Duffy, you had just stated that you had met Mr. Morao at your apartment on the evening of June 15th, is that correct, 1973?

A That's correct.

Q My question to you is what, if anything, did you state and what, if anything, did Mr. Morao say?

A George asked me if it would be possible for me to, in the vernicular, stash a chic in my apartment.

THE COURT: Stash a what?

THE WITNESS: Chic. In other words, would I sequester a young female.

THE COURT: Oh, I thought you said check.

THE WITNESS: No, chic.

THE COURT: Chic, you mean? Oh.

Q What did you then do?

A I said no.

Q Did a time come on June 16th, 1973 when you met and went to Mr. Freeman's house, June the 16th?

A Is the question did I go to Mr. Freeman's house on June 16th?

Q Yes.

A Yes.

Q Can you tell us when you went to his house?

A Early afternoon, I would say, sometime maybe between twelve and -- and two. Something like that.

Q When you arrived at his house would you tell us who was there, if anybody?

A When I arrived at the house the only person I saw was George. Theresa was out with the baby, and that was it.

Q During the course of the time that you were there, did you speak to anybody else?

A Yes, Stan Freeman woke up, came downstairs, made breakfast, English muffins or toast and a cup of coffee. Max-Packs, really lousy coffee.

Q Was there anybody else there at that time that you recall?

A I believe that Rosalie Rudner was there at that time. I do -- I know that her luggage was there. I know that it

was her luggage -- no, I don't know, I assume that it was her luggage because there was a Brazilian passport on the top of the suitcase and it was not George's or Theresa's passport, because I had them in my possession.

Q Let me interrupt, did you see Rosalie Rudner at the house on that day?

A Well, I couldn't tell you this before -- we were sitting -- the way the apartment is situated there is an upstairs. I was aware of somebody walking around upstairs while I was there. I was sitting with my back to the stairway. I know somebody came downstairs to the kitchen and went back upstairs. I believe it was Rosalie Rudner. I did not speak to her.

THE COURT: What day was this?

THE WITNESS: Saturday, I think. The 16th of June.

THE COURT: Did you say you saw her baggage there?

THE WITNESS: I saw -- I saw a bag.

THE COURT: Oh, a bag.

THE WITNESS: Yes, a --

Q Let me ask the question.

A No, it was not. Neither of those bags.

Q I have asked the witness to look at Government's

Exhibits 36 and 37 and ask him if these are the bags he's referring to?

A No, it was not. It was a kind of large size pocket -- pocket book, sort of like a mail carrier's bag in a way.

Q I'd like to --

A It was not a hard suitcase but it had clothes in it.

Q Mr. Duffy, let me turn to another question: While you were at Stan Freeman's house that morning, or rather that afternoon, did you have occasion to make any phone calls?

A Yes.

Q Where did you call?

A I called a friend of mine in Vermont.

Q Now, I'd like to direct your attention to the following morning, June 18th.

A Okay.

Q Did you have occasion on June 18th to again meet Theresa Costa?

A Yes.

Q Would you tell us where you met her?

A I believe -- I believe she came up to my house and from there we went down to the offices of Nick Botarro, the lawyer who was representing her in the immigration

hearing. I made sure that she had all of her papers, passport, all the stuff that she needed, and when I found that Mr. Bottaro was there in his office, although I didn't happen to see him, I left because I didn't feel like sitting in Immigration twiddling my thumbs for another afternoon like I had a couple of days earlier.

Q And where did you go at that time?

A I went back up to Stan Freeman's house, stopping to pick up a box of Pampers on the way.

MR. BELDOCK: Box of what?

THE WITNESS: Pampers, disposable diapers.

Q Do you recall when it was that you returned to Mr. Freeman's house?

A Pardon?

Q Do you recall when it was that you returned to Mr. Freeman's house?

A What time of day?

Q Yes.

A Maybe around one in the afternoon.

Q In the afternoon?

A Yes.

Q When you arrived at Mr. Freeman's house would you tell us who, if anybody, was there?

A Yes, Rosalie Rudner was there at that time.

And at that time I did speak to her, sort of. I spoke to her.

Q You say sort of. Will you tell us what you mean?

A Well, I talked to her for, I don't know, maybe five or ten minutes before I found out that she didn't really understand English, and I was kind of wasting my time.

Q And this is the girl referred to in Government's Exhibit number one?

A That's correct.

Q And you saw her that day at Freeman's house?

A Yes.

Q Who else, if anyone, was there?

A George.

Q Was Mr. Freeman there at that time?

A I don't believe so.

Q During the time that you were there did you have occasion to meet with Mr. Freeman, George?

MR. BELDOCK: I object.

THE COURT: May I have that question?

MR. BELDOCK: Leading.

Q During the time that you were there, after you arrived when you say Mr. Freeman wasn't there, did the time come when you saw Mr. Freeman in that house?

THE COURT: Overruled. I will allow it.

THE WITNESS: I had seen him in -- in there on -- before then, when we were sitting down having coffee, but that was, I believe on the 16th.

Q After you left the house that day did you ever see George Morao again?

A No.

Q Did you ever see Rosalie Rudner again?

A No.

Q Did you ever hear from or receive any communication from George Morao again?

A Yes.

Q And what was the nature of that communication?

A It was a postcard from Lisbon that said to the effect, "Having a wonderful time, wish you were here." That was about the size of it. I think there were some little fishing boats.

THE COURT: What was George Morao's business as you know?

THE WITNESS: Photographer.

MR. FRIED: Could I have one minute, your Honor.

I have no further questions.

THE COURT: Mr. Beldock?

MR. BELDOCK: Your Honor, I am partway through the minutes. There are about twenty minutes. I need at least five minutes. Preferably no more. We can do it very quickly, Judge.

MR. FRIED: Prior to that I have one other document. These are some notes that Mr. Duffy made today that he handed me in my office that he thought might refresh his recollection. I thought I'd offer them.

THE CLERK: So marked as Government's Exhibit 40 for identification.

THE COURT: Let me know when you're ready.

MR. BELDOCK: Your Honor, would you please direct the witness that he should not talk to any --

THE COURT: No, I will make no such direction. You can ask him what he said to the United States Attorney.

(Continued on the next page.)

BS/LH
6AM (1)

CROSS-EXAMINATION

BY MR. BELDOCK:

Q Mr. Duffy, you said on direct that you had met Stan Freeman in -- you were talking then about June of '73, right?

A Yes.

Q Now, had you also known of Stan Freeman before that?

A Well, yes, in a way. In that I worked at the Electric Circus which he owned and he was there and I was there, and so were about 40 or 50 other technicians just putting in lighting, and when I was working there I knew that he was the boss and he was running around yelling at people, but I didn't know him.

Q That was back in '67 or '68?

A '67 or '68, something like that.

Q But you learned then that Mr. Freeman was the owner or the boss at the Electric Circus, which was a very well known --

A That was before it was very well known.

Q When the club first started?

A Yes.

Q That is in New York City, Greenwich Village?

A Yes, but not Greenwich Village. East Village.

Q Thank you. Now, it was until the event that you have told us about that you actually were introduced to Mr. Freeman or whoever had anything to do with him, right?

A The first real contact I had to do with him was about Shish-Kabobs.

Q That was sometime in the week of -- you tell me?

A To the best of my recollection it was the 11th of June that George Morao came over to my house to ask me where he could get meat wholesale because he had to make several thousand shish-kabobs for the opening of a dance hall type thing called the Jardans in the Hotel Diplomat and where he could get an awful lot of chicken and beef and lamb and shrimp and stuff like that. So we went walking over to the meat district, a five minute walk from where I live, at two or three o'clock in the morning to see if we could get some off the trucks wholesale.

Q Incidentally, before you go on with that, I have never spoken to you, have I, before today?

A No.

Q Has anybody on behalf of Mr. Freeman ever spoken to you?

A No.

Q That includes Mr. Freeman, aside from the events you have testified to?

A Until and hour or so ago I had not seen Stan since the middle of June, before he was arrested. I have not seen him subsequent to the arrest.

Q So you had the first conversation with George then about shish-kabob for the club that you understood from George that Freeman was connected with?

A Yes.

Q And that was opening?

A On the 13th.

Q Of June?

A Yes.

Q J-a-r-d-a-n-s, right?

A Yes, I think so.

Q Was that the first time you spoke to George that June, or had you seen him or spoken to him previously?

A I had seen George almost on a daily basis. Besides being very close friends I was also astrologer, sort of a human yellow pages.

Q You did charts for Theresa, right?

A The baby.

Q Would you describe George to me and his personality -- was he a down person, a charming person, a volatile person?

A Active, very personable. He was into -- involved in

thousands of things simultaneously,without ever making a heck of a lot of progress in any one particular thing, but he was always -- he didn't sit down very much. He was always running from this place to that place. He had to be at this club to take pictures of such and such and he had to be over at this place on the University of the streets for a photographic display, and just all over the place. He was having -- really had a lot of legal problems for awhile. I was taking him to a lawyer about them, seeing him once a week for something different, a couple of landlord problems, immigration problems, trying to get a birth certificate for the baby, all kinds of nonsense.

Q Would you say that he was a very personable and persuasive and likable kind of a fellow?

A Yes, a really nice guy.

Q Charming?

A Charming wouldn't be my word.

Q I will take your words.

A A nice guy.

Q How about Theresa, would you describe her?

A Very shy, very small, very birdlike; also a photographer, also a very nice person -- really nice people.

Q Let's go back to the brochette subject. Was there any more that happened that week? You told us about

the night of June 11th, going into the morning of June 12th?

A Yes.

Q Then did you have any communciation with Stan Freeman or with anyone else about the brochette?

A Yes. I spoke to him a couple of times on the telephone and when he was calling me trying to locate George about the thing.

Q In other words, there was a plan to provide brochettes for opening night?

A He had this club that was scheduled to open on the 13th, I believe, and he wanted to have George cater the affair and to do so called for something absurd like 2,000 shish-kabobs.

Q Among George's talents, was he a talented chef or was he somebody who could do this?

A Yes, he was a good cook, very different. You know, Brazilian cuisine.

THE COURT: All this is interesting, but what has it to do with this case.

MR. BELDOCK: I'm trying to establish that their relationship before and at all times had nothing to do with this case, and I will stop with this, your Honor. But this is the relationship prior to June 13th which we are dealing with

now and you permitted the Government quite properly to establish some relationship as people knew it and I want --

THE COURT: The relationship of the alleged conspirators with each other. But I am not interested in knowing whether Mr. Morao is a good cook or whether his wife was birdlike, whatever that means.

BY MR. BELDOCK:

Q What about with the brochette scheme, anything -- you say you spoke to Stan a couple of times on the phones about details, was there anything else?

A They never go made, if that's --

Q It fell through, right?

A Yes.

Q Because it was too complicated and it never worked out, in any event.

A Because there wasn't enough time to get the thing together, really. I mean, if there had been a week, sure it would have been possible, but in two days it was kind of absurd.

Q Did you see Stan Freeman at any time face to face during the period you are talking about, talking about the brochettes?

A No.

Q How about up to the night of June 13th?

A No.

Q That is the opening of his club? You weren't there, by any chance?

A No.

Q And you had not seen Stan on the day of June 13th?

A No.

Q You said in answer to one of the questions that you got -- this is on direct -- you said words to this effect, that you got the chronology of the events fairly well srambled and you had trouble reconstructing them -- I don't think you used the word "reconstruct," but you said you didn't remember what happened.

A Something to that effect, yes.

Q So that I take it that you had discussions at some time with Mr. Fried, the U. S. Attorney, or with Mr. Levine, or with some other Customs Agent, in which you went over dates and they gave you information and tried to reconstruct things?

A Yes, but that wasn't to which I was specifically referring. I was specifically referring to the testimony I gave to the Grand Jury.

Q I see.

A Which I later realized upon reading my testimony that it was illogical for me to have gotten lost going there on the 18th when I had been there on the 14th.

Q But not on the 13th, right?

A No.

Q We have established that?

A No.

Q Now, the 14th, is that the day that you said that you first went with Theresa to immigration or to Patero's Office to pick up a letter to go to immigration?

A That is correct. That is the first time Theresa and I went to immigration to have a postponement because Mr. Patero was unable to appear.

THE COURT: We will suspend for lunch at this time. The case will continue at 2:00 O'clock.

(Luncheon Recess.)

End of Morning.

BS/LH 1PM (1)

AFTERNOON SESSION.

D A V I D D U F F Y, previously having been duly sworn, resumed the stand, testified as follows:

CROSS-EXAMINATION

BY MR. BELDOCK (CONTINUED):

Q Mr. Duffy, let's go to the chronology again. On your direct I think you said that it was on the night of June 13th to the morning of June 14th that George and Theresa came to your house --

A Just George alone.

Q I'm sorry. Then you had a discussion and you called the lawyers and so on?

A Right.

Q On June 14th, to your knowledge, were George and Theresa still at the Hotel Albert?

A I don't know.

Q Did you receive a phone communication from George or Theresa on the morning of, or during the day of June 14th?

A If I received a phone call from them during the day of the 14th, it would have had to have been before 11:00 O'clock in the morning.

MR. BELDOCK: Let us put something before you by way of evidence, by agreement.

MR. FRIED: This is a copy of the hotel bill from the Hotel Albert for the room occupied by the Costa's. Attached to it are two slips of paper, telephone service paper dated June 14th and a paper dated June 13th. The Government has not objection to the offering of these in evidence.

THE COURT: May it be marked?

MR. BELDOCK: Yes, Judge. I offer it in evidence.

THE COURT: Any objection, Mr. Wall?

MR. WALL: No objection.

THE COURT: Let it be marked.

THE CLERK: So marked as Defendant Freeman's Exhibit D in evidence.

(So marked.)

BY MR. BELDOCK:

Q Is your phone number 202-675-6306?

A Yes. It is 675-6306.

Q That was your number?

A Yes.

Q There are two phone slips, one of them bears the number that I just stated and has at the top of it the date stamp June 14th.

Did you receive in the few days in and around

June 14th, June 15th, June 16th, did you receive a number of phone calls from George?

A I suppose so. I don't keep a record. But he called a lot.

Q In any event, on direct, correct me if I am in error -- on direct I believe you said that Theres Costa came over to your house on June 14th to go to Patero's office?

A No, that isn't correct. That was what I said in Grand Jury.

Q You're right, I'm sorry. My notes are misleading me. On direct you said, if I remember correctly, that you on June 14th went to Freeman's house?

A Correct.

Q When you testified before the Grand Jury on July 20th, 1973 --

A I had it backwards.

Q Speaking of that incident on June 14th, were you asked this question --

A You are referring to what I started to say on direct and then I got --

Q Let me just establish it and you can explain it.

Were you asked this question and did you make this answer:

"Question: Did you meet her or arrange to go

with her to the Immigration Service in Manhattan?

"Answer: Yes, she came over to my house that morning, or -- wait a second, yes, whe came over to my house that morning and from there we went to the offices of an attorney named Patero at 233 Broadway, picked up a letter that he had typed and gave it to the Immigration Department for his inability to be present at the hearing because he was in court in Queens representing another case and asking for an adjournment of her hearing, or postponement of her hearing until the beginning of the next week. And we picked the letter to that effect up from his secretary and went over to, what is it, West Broadway." That's the end of the answer.

First of all, do you remember making that answer to that question?

A Yes.

Q Did you know Mr. Patero?

A No.

Q So when you first went to his office on June 14th, that would be the first time that you had --

A The first time that I saw him was on June 13th.

Q You went there also on the 13th?

A I went there the first time around 4:00 O'clock on the 13th of June with George, Theresa and the baby.

Q Before that had you known him?

A No.

Q You weren't the one who called and contacted and got the lawyer, were you?

A No.

Q You were just helping George and Theresa regarding his immigration problem?

A Sort of playing interpreter and the like.

Q Now, I want to go to the afternoon of June 14th when I think you said on direct you were at the office of Mr. Katz and Mr. Lefcourt?

A That is correct.

Q In talking to George that day, or in anything that George said at the office that day, you understand that George had learned that when the two girls came into the airport, two ladies came into the airport, one was clean and the other was not clean?

A Correct.

Q In making that statement, was it clear that George was talking about one was supposed to have cocaine and the other had no cocaine?

A Correct.

Q On June 14th you didn't see Mr. Freeman, in any event.

A Pardon?

Q You did not see Mr. Freeman on June 14th?

A No.

Q On June 15th you say it was about eight to ten at your house that George came over, eight to ten at night?

A I think so. It was after dark and it was before midnight, so --

Q Are you sure whether it was the 15th or the 16th?

A Not 100 percent, no, sir. I know that it was after the 14th and it was either -- it could have been the 16th.

THE COURT: Do you recall whether it was a weekday or was it part of the weekend?

THE WITNESS: No, I don't recall, sir, because Saturday is a working day for me also, so is Sunday.

Q And that was your state of mind when you were at the Grand Jury when you testified, you did not know whether -- that this time was the 15th or the 16th?

A I am not sure whether it was the 15th or the 16th.

Q Whether it was the 15th or the 16th, on that occasion that you are talking about, George then asked you, as you said on direct, in the vernacular, to "-a chick," is that the occasion?

A Yes.

Q Did he tell you at that time that he wanted you to stash this girl, hide this girl because she was wanted by immigration?

A No.

Q I'm asking you to look at a statement which the Government has provided us of the initial interview of you by Mr. Levine and Mr. Silvestro?

A Yes.

Q See if it can refresh your recollection, that's all at the moment.

By way of preliminary, do you recall when it was that Levine and Silvestro came to talk to you?

A I don't remember what day it was. I remember the occasion.

Q July or June?

A I would --

Q Was it after the time you came back from Vermont?

A Yes. So it would have been July for sure. I have not the idea of the date.

Q Am I right that sometime towards the end of June you went to Vermont on a vacation of some sort?

A Yes.

Q You came back, if I recollect?

A Yes.

Q And you came back June 29th or so.

A Yes.

Q And it was sometime after that the agents came to talk to you?

A Yes.

Q This is given to us as supposedly a report of the agents of what you said at that time, and I ask you to look at this information in the middle of the page and see whether that refreshes you recollection as to whether at that time you remember that George had said to you that he wanted you to hide the girl because she was wanted by immigration -- just yes or no?

A I was -- I'm still reading this, if I can have a minute, please.

Q Go on, you can read it all if you wish, but I am primarily concerned about the middle paragraph?

A Yes, I read that, but I just wanted to put it in context.

Okay, I have read this.

Q I am limited to certain kind of questions.

A Could you repeat the question?

Q The question is, does reading that refresh your recollection as to what George told you when he came to your house the time he asked you to hide the girl, does it

refresh your recollection regarding the statement about immigration or not?

A I believe the statement that is represented that I gave to the agent, I think is slightly out of -- slightly a bit apart from the truth; it wasn't quite right.

Q That's all?

A George never said it was an immigration problem, he said that to a lot of other people, but I don't believe that he ever said that to me.

Q I see. But you had heard from things that George was saying at that time that he said it was an immigration problem, though, to you?

A He said that, yes, he had said that to other people.

Q Now let's go to June 16th. That is the day you were at Stan Freeman's house, right?

A I believe so, yes, that's a Saturday.

Q You were there for several hours?

A Maybe two, maybe less.

Q And sometime between twelve and two you arrived, or was that the time you were there?

A Both.

Q So it could have been two hours give or take, either way?

A It wouldn't have been before noon, but I'm sure I was

out of there before four.

Q You came over to see George, right?

A Yes.

Q And sometime during the time you were there Stan woke up, came down, made coffee; is that right?

A Yes.

Q And you believe that Rosalys Rudner was there that day?

A Yes.

Q Now, during that day, am I right in saying that you saw some luggage?

A Yes, like a big pocketbook type thing.

Q Maybe two bags, do you recall?

A Maybe.

Q And a Brazilian passport?

A I believe so.

Q It is definitely the 16th?

A I believe it is, yes.

Q Do you know whose bags they were?

A No. As I say, it was sort of a logical deduction because I saw what I thought was a Brazilian passport, I thought I had George's and Theresa's passports in my pocket, and I was wondering how it got out on the floor and I found that I still had their passports in my pocket, so I assumed else's passport.

(continued on next page)

Q So there was another passport, which was Brazilian, which you assumed was another person's?

A I didn't look at the passport or the luggage.

Q That is the reason you drew the conclusion about the luggage being Rudner's?

A Yes. And there was also female clothing in the thing, what I assumed was female clothing.

Q Do you recall whether on the 16th, while you were there, Stan Freeman went out for any period of time and came back? Do you recall that?

A I don't recall it, although it was possible when he first came downstairs he was wearing a bathrobe and I would say close to 90 percent of the time he was there he was on the telephone -- telephones.

Q He was on his own business, so to speak, as far as you know?

A Yes.

Q Did there come a time during that day when you were there that you made a call to someone in Vermont?

A That is correct.

Q During that call did you say something about going fishing?

A Yes.

Q And in fact, you say now that's the trip you

took in Vermont?

A No.

Q No?

A No.

Q Did that call have anything to do with the conversation you had with George?

A My fishing trip up to Vermont was an afterthought, because, like I had not been up there since last year, and after having made this phone call I kind of got fish fever, and so I went up, but differently.

Q Did you make that call at the request of George, by any chance?

A More or less, yes. On his behalf.

Q He wanted to know about Vermont, something about Vermont?

A He just wanted to get the chick out of the country.

Q He talked about going across the border, something like that, is that right?

A Yes.

Q And he was talking about that in a conversation --

A That was the gist of it, yes.

Q -- that you were having with him?

A Yes.

Q And at some time during that afternoon did you or George in each other's presence ask Stan Freeman if he had any maps of that area?

A Yes.

Q And Stan was on the phone at that time, if you recall?

A I really don't recall if he was on the phone that particular second or not. He may very well have been. He had about 17 telephones.

Q Did he then go and reach near him someplace in the room, grabbed a stack --

A Pulled out a large plastic travel pack that had various types of ice cream spills like it used to live in his glove compartment, and there was a whole lot of maps in there, one of which was New England.

Q And he tossed the map or the whole pack over to you and George?

A Whole pack.

Q That's the last you have seen of Stan Freeman before this case, right?

A Yes.

Q June 16?

A Yes, I think so, yes.

Q Let me just ask you, I think I have only

two other questions. I want to go back to George and ask you this question: Was George the kind of person, in your experience with him, who would drop into your house unannounced, come and go quickly?

A Up until the evening of the 13th he always made a very definite point of telephoning before he came over, which was pretty frequent, usually once a day or maybe five times a week, something like that. I was in the process of doing a carpentry job for him in a loft on Christie Street, maybe. He usually telephoned before he came, but once this whole nonsense started he just started popping in and out, didn't stay very long, and was in pretty much in perpetual motion.

Q Bear with me for a moment. I want to look at my notes.

MR. BELDOCK: I have no further questions of Mr. Duffy.

Your Honor, there is one thing I want to do, if you could bear with us for a minute while we go on to even the next witness and interrupt. There are two bags from Mr. Fried's office that can be brought down, and I wanted to see if he can identify them.

THE WITNESS: I can't.

MR. BELDOCK: If you can't, you can't. That will solve that. You can?

THE WITNESS: No, I cannot. I looked at them upstairs.

MR. FRIED: Mr. Beldock, he is referring to different bags. I want to make that very clear. There are two other bags that are not --

I am in a different office right now. So those he has not seen.

MR. BELDOCK: Can you bear with us until the next witness?

THE COURT: Where is your next witness?

MR. FRIED: In my office.

THE COURT: Call him and get him on the way down. Let's move this case along.

THE WITNESS: If it will be possible, my parents are coming to visit me for the first time in three years. They are coming in from Florida, and I am supposed to meet them at four.

THE COURT: You should be through within the next few minutes. That is my fondest hope.

Do you have any questions, Mr. Wall?

MR. WALL: No questions of the witness.

Duffy - cross

THE COURT: Any redirect?

MR. FRIED: I have no redirect. Your Honor, while we are waiting, there are some documents that still remain to be introduced, and we have agreed on them, laboratory reports.

MR. BELDOCK: We could take care of the stipulation --

THE COURT: You may step down. Remain in the courtroom.

I understand that the United States Attorney is going to produce some bags, and Mr. Beldock wants to know whether you can identify them.

MR. BELDOCK: While we are waiting, I would like to read into the record a stipulation regarding the bill that was just introduced as Defendant's Exhibit D from the Hotel Albert. It is a room registered to Theresa Costa, and we have not required the hotel personnel to come down. It shows the arrival date of June 9, 1973, and by explanations made to both Mr. Fried and myself concerning this bill at the luncheon recess, the bill which I now hand up to your Honor shows that as of

June 16, Saturday, June 16, there was an outstanding balance due on that bill for that room of $8.59. You will see that figure up at the top of the column under the date 16. On that day, if you run down to the bottom of that column, a payment was made by someone of $8.59, which would have canceled the bill, the back due bill.

The other figures that you see running into the next week were the hotel's billing forward into the next week. No payments were made on those. They had to do it the week after June 16, the payments beginning after June 16, and the figure that you see of $65 and some cents is the hotel's indication that they are transferring that to a collection account.

THE COURT: All right.

MR. FRIED: Your Honor, the witness has arrived.

THE CLERK: Laboratory report marked Government's Exhibit 41 for identification.

THE COURT: Any objection to his waiting in the courtroom?

MR. FRIED: I have no objection.

THE COURT: Suppose you sit down in the front bench of the courtroom.

THE WITNESS: Is it O.K. if I wait outside in the hallway to have a smoke?

THE COURT: If you wish. Don't go too far.

(Witness Duffy excused.)

MR. WALL: I think also the record should reflect that the document which Mr. Beldock showed to the previous witness in an attempt to refresh his recollection was Government's Exhibit 38. I don't think it was identified as such.

THE COURT: Is that correct?

MR. BELDOCK: That is correct.

MR. FRIED: Yes.

With the consent of the defense counsel, this Government's Exhibit 41 is offered, which is a laboratory analysis of the five pounds of cocaine that was seized.

THE COURT: Did you hear that, gentlemen?

MR. WALL: Yes, sir.

MR. BELDOCK: Yes.

THE COURT: I understand without objection the laboratory analysis of the five pounds seized from Tambini is now offered in evidence as proof of the nature of the seizure.

MR. WALL: No objection.

THE CLERK: Government's Exhibit 41 now in evidence.

(So marked)

MR. FRIED: Government calls as its next witness Mr. John Spencer Davis, Jr.

J O H N S P E N C E R D A V I S, J R., called as a witness, first being duly sworn, testified as follows:

MR. FRIED: Your Honor, prior to the examination I should note for the record that the grand jury minutes of the witness have already been turned over to the counsel for the defense as 3500 material.

MR. BELDOCK: No.

MR. WALL: I have not seen it.

THE CLERK: Grand jury minutes of John Spencer Davis, marked Government's Exhibit 42 for identification.

1

Davis - direct

MP @?L

(So marked)

DIRECT EXAMINATION

BY MR. FRIED:

Q Please state your name.

A John Spencer Davis, Jr.

Q Your address?

A 5030 Sedgwick Street, Washington, D.C.

Q Mr. Davis, how old are you?

A Twenty-three years old.

Q As you look about this courtroom, do you know the defendants in this case?

A Yes, I do.

Q Would you identify them, if you can, please.

A The man on the right is Stanton Freeman, and the man on the left is Kim Ornitz. On my right the man is --

THE COURT: Sitting where? There are three men.

THE WITNESS: The defendant in the tan suit is Stanton Freeman and the defendant on the left, my far left, is Kim Ornitz, with the glasses.

THE COURT: Let the record show that the witness pointed out the defendants Stanford Freeman and Kim Ornitz.

Q Would you tell this Court how long you have known the defendant Kim Ornitz?

A I have known the defendant Kim Ornitz approximately four and a half years or so, four years.

THE COURT: Suppose you ask whatever question you want, Mr. Beldock, of Mr. Duffy, and he can go on his way.

Mark them as exhibits.

MR. DUFFY: The bags I saw were leather, brown suede, soft.

THE COURT: Did you ever see these bags, marked Government's Exhibits 43 and 44 for identification?

MR. DUFFY: No, sir.

THE COURT: Any other questions you want to ask Mr. Duffy?

MR. BELDOCK: No.

MR. DUFFY: Does that mean I can go home?

MR. FRIED: Yes.

MR. DUFFY: Thank you very much.

BY MR. FRIED:

Q Mr. Davis, you had just stated you had known Mr. Ornitz for four and a half years; is that correct?

A Approximately, yes.

Q Will you tell us how you would describe your relationship with Mr. Ornitz?

A Very friendly relationship. He and I were musicians together for three years, as professionals in New York City, Long Island, upstate New York, Connecticut. We lived together for a long time. I lived in his apartment in New York on and off for a few years, and we had our houses out in the country when we rented and rehearsed music.

Q Tell us how long you've known the defendant Stanton Freeman.

A Well, I haven't ever really known him. I met him on the day of the 18th.

Q June 18, 1973?

A Yes.

Q Mr. Davis, would you tell us where you were the week of June 15, 1973, the week preceding June 18th?

A I was in Amaganset, Long Island, visiting a friend.

Q Had you just arrived from Colorado?

A Yes.

Q And Friday, June 15, did you have occasion to travel from Amaganset, Long Island, to New York City?

A Yes, I did, by train.

Q Did you stay the night of Friday, June 15th, at the home of Kim Ornitz and his mother?

A Yes, I did.

Q Did you have occasion to leave his home for Connecticut?

A Yes.

Q Do you recall when you left?

A I left for Connecticut the following day, a Saturday morning, I believe it was, the 16th.

Q Mr. Davis, when did you next return to New York City?

A I returned on Monday the 18th, to New York City.

Q From where in Connecticut did you come?

A I was driven from my girlfriend's house in Guilford, Connecticut, to New Haven, the train station.

Q Mr. Davis, prior to coming to New York, did you have occasion to make a telephone call?

A Yes.

Q Can you tell us what time this was as best you can recall?

A To the best of my recollection I made this phone call approximately 12:30 or a quarter of 1:00 in the afternoon of June 18th.

Q To whom did you make such a telephone call?

A Mr. Jim Ornitz at his apartment in New York.

Q Where did you place the telephone call from?

A A public phone booth.

Q How did you pay for it?

A My father's credit card.

Q Tell us what was said by you and what was said by the defendant Kim Ornitz during that conversation.

A To the best of my recollection I asked him to please be at his apartment at approximately 4:00 o'clock, that I would be arriving, and one other thing, I would like to go out and have some dinner with him.

Q Did a time come when you arrived in New York City on Monday afternoon, June 18?

A Yes, sir.

Q About what time did you arrive, do you recall?

A I believe I called in about a quarter to 4:00, maybe 3:30.

Q Did you go directly from the train station to Mr. Ornitz's home?

A Yes.

Q Tell the Court where Mr. Ornitz's home was located.

A 270 Riverside Drive, New York City.

Q When you arrived at Mr. Ornitz's home, who, if anybody, was present?

A Mr. Ornitz was the only person present.

Q Did you have a conversation with him at this time?

A Yes.

Q Do you recall what, if anything, you said, and what, if anything, the defendant Ornitz said to you?

A Well, he said to me -- first of all, he asked me if I am hungry. I said, "I am, but I could wait a little while."

He said, "If we go now we can meet Wanda down near Times Square. We can go to this great Japanese restaurant and Wanda is working down there, and she could meet us at the restaurant."

"Why don't we go?"

Q Did a time come when Mr. Ornitz told you that he was making a telephone call?

A Yes.

Q A time came when Mr. Ornitz left the room?

A To the best of my recollection. I can't be sure whether he left the room to make the phone call or whether I went to fix myself up because I was going out. I was not in the same room when he made the phone call.

Q Did he tell you who he called?

A He said he called Wanda.

Q A time came when you left that apartment and

accompanied Mr. Ornitz?

A Yes.

Q Where were you going?

A Heading for the 96th Street train station to take it down to the Times Square area.

Q Did you arrive by train in the Times Square area?

A Yes.

Q Do you recall about what time it was?

A Probably about 4:30, 4:20.

Q Can you tell us when you came out of the train station, if you did, where you went?

A We started walking to the restaurant that I imagine we were going to be going to.

In the meantime we passed -- he said, "Well," Kim said, "Stanton Freeman has a club that is opening up tomorrow night, and if we stop by and he's there, we might be able to get a blow of coke."

I said, "What about Wanda?"

He said, "Well, she can wait a few minutes while we go see."

Q Will you explain for the record what you mean by the phrase "a blow of coke"?

A A snort of coke.

8

Davis - direct

Q Exactly what is that?

A You get a small amount of coke and you snort it (indicating).

Q Was there any further conversation between you and Mr. Ornitz at this time?

A He said -- I think I already said this -- but I asked him about Wanda, and he said that she can wait.

We entered the HOtel Diplomat and went downstairs.

MR. WALL: The only reason that caused me not to object, had I known this was to be the testimony, is the fact that this is a non-jury case, and I would like to merely state for the record my objection to the statements made by the witness. I think that I can be confident your Honor will take it in context and we are not talking about the charge in this indictment.

THE COURT: If I feel it is not relevant, I just won't consider it.

MR. WALL: Fine.

THE COURT: When you talk about a conspiracy, we are talking about all levels of operation right down to the user. I charge

on chain conspiracy so often. I don't recall your being present when I did so, so you don't know what I usually say. In chain conspiracies there are all levels, importers, wholesalers, retailers, users. I must take it and see. I don't know at this point.

MR. WALL: All right.

Q When you arrived at the hotel with Mr. Ornitz, that afternoon, on June 18, where did you go?

A We entered the lobby and made a right-hand turn and went to his flight of stairs. That flight of stairs leads down to the night club Ble Jardin. And walked down the stairs, and the club was locked. We knocked on the door, and nobody answered.

Q What did you then do?

A We walked back up the flight of stairs and walked along the corridor that led out and to the left there are glass windows, which are windows of a coffee shop inside.

Kim recognized that Stan was sitting up at the counter. So they made contact and Stan waved us in and Kim went and sat up at the counter with him and I sat in a chair close by but not at the counter.

He introduced me to him, of course.

Q Was anybody else present at the time whom

you were aware of besides yourself and the two defendants?

A The guy that was tending the counter.

Q Tell us what if anything at that time was said.

A They had, to the best of my recollection, they had a conversation dealing with the operation of the club.

Q Did a time come when Mr. Ornitz and Mr. Freeman left your presence?

A Yes. As a matter of fact, when Mr. Freeman finished with his meal we all got up as if to leave and go out and talk somewhere and we got to the door of the coffee shop and Stan turned and said, "Jock, if you don't mind, a few minutes I want to talk to Kim."

I went back into the coffee shop and ordered a coca-cola and drank the coca-cola right there. In the meantime I saw Kim and Stan just go out and sit in the lobby.

Q Did a time come when they subsequently rejoined you?

A Yes. As soon as I finished my coca-cola I thought it was about time that they finished. I walked to the door of the coffee shop and when I got there they were walking toward me.

Q What happened then, if anything?

A Mr. Freeman and Mr. Ornitz asked me to come over and sit down and have a little discussion.

Q When you say sit down, do you mean in the lobby?

A Yes.

Q Did you sit down?

A Yes, we all did.

Q Was there anybody else sitting with you?

A There was nobody. There were people milling around in the lobby.

Q Tell us what, if anything, was said by yourself, by Mr. Ornitz and Mr. Freeman.

A When we went to sit down I sat next to Kim. Obviously, I felt more comfortable sitting next to Kim.

Stan said, "Jock, why don't you move over here?" which I did. I moved over next to Stan, and to the best of my recollection, this is what occurred: Stan said, "Jock, there is this chick who is hot and she is a cocaine smuggler and her bags are at the Hotel Paramount, which is four blocks away."

At that point I stopped him and I said, "How can anybody smuggle coke these days? How can anybody like that do it?"

He said she is a photography student and has

a lot of equipment and somehow worked it out, or words to that effect.

And he said -- We continued to have the conversation -- and he said, "I have made arrangements for these bags to be picked up sometime today. They belong to a girl named Rosalys Rudner, Room 1815, Paramount Hotel, and the bill was $54.27."

"Now, I have arranged for a girl to pick them up, but if you can do it, Jock, it would be great, and you can get something out of it."

(Continued on the next page.)

MP 2/21

Q What did you say then, if anything?

A I said, "Well, is there any coke in the bags?"

And he said, "Well, there is just a dash, maybe as much as five grams."

So at that point I said, "Well, now, I don't think I am up for it."

He replied, "That is cool."

That part of the conversation terminated. We all stood up and Stan got his had and briefcase, and we all walked out together towards the marquee outside the Hotel Diplomat. When we got outside the Hotel Diplomat, Stan -- and Kim and I were about ready to leave and meet Wanda -- Stan said, "Where you going?"

We said we were going to have dinner.

He looked at me again and said one more time --

Q Who is "he"?

A Stan. "Jock, are you sure you don't want to go down and pick up these bags?"

And I said, "Well, what is in it for me?"

He said, "We will have to see. I am not sure whether you will get $400 and get high, whether one gram of cocaine and $50, or a gram, or just $50, I am not sure."

Then I said, "Oh, well, what the hell.

I will do it."

And then he reiterated to me the information he had given me inside about the number of the room and the girl's name and the cost of the hotel bill. And he folded up three $20 bills and handed them to me.

Then I was ready to go and he said, "Now, Jock, the bags might have heat on them. They may be watched. So if you do get arrested, don't tell them anything about me, because of the people I know and a thing like this they can follow up, my friends and me, and they can find Rosalys Rudner and we are about ready to get her out of town."

I said, "Sure, if anything does happen, I will do that."

So Kim Ornitz and I began to -- Before that, I'm sorry --

Q Go ahead. I'm sorry.

A Kim said, "Well, Jock, I will go down with you, but I am not going to the hotel."

I said, "That is cool. I will do it."

Then we started walking down toward the Hotel Paramount, and you cross over Times Square, and Kim and I both agreed, I don't know who brought it up, this is the craziest thing we have ever done.

Kim also said, "Well, Jock, I don't know

what we are going to get. We might get a little more than a gram."

So we walked down, I believe 41st Street, where the Paramount is, and Kim stopped about 150 feet short of the door of the Hotel Paramount, and I went in.

I had the three $20 bills with me and I went to the desk and I said, "I am here to pick up the bags for Rosalys Rudner, who is in Room 1815."

That's what I said.

Then they stalled me for a while, saying that the bags were in storage and had to be cleared, and you know, make sure everything is all right, and finally they got the bags over there and I had to give them my identification, which is my birth certificate, driver's license, draft card, and a photo identification, and an Aspen ski pass.

MR. FRIED: I would like to offer these as Government's Exhibit 45 and Government's Exhibit 46.

THE CLERK: Document marked Government's Exhibit 45 for identification.

Another document marked Government's Exhibit 46 for identification.

MR. BELDOCK: No objection.

MR. WALL: No objection to either exhibit.

MR. FRIED: I offer Government's Exhibit 45 and Government's Exhibit 46 in evidence.

THE COURT: Let them be marked.

THE CLERK: 45 and 46, previously marked for identification are now marked as Government's Exhibits in evidence.

Q Mr. Davis, I show you Government's Exhibit 45 and Government's Exhibit 46 and I ask you if you can tell us what they are.

A This is the receipt for the bags which I paid $54.27 for, and this is the voucher, whatever it is, that I signed after giving my identification.

I wrote down my address and my signature.

Q Now, Mr. Davis, I will just ask you to look at Government's Exhibit 36 and Government's Exhibit 37 and ask you if you can recognize these.

A Those are the two bags I picked up and lugged down the street.

Q You told us you picked up the bags and left the hotel. Tell us where next you went.

A I picked up the bags and went outside and headed towards Times Square to go back up to the Hotel Diplomat.

When I got to the other side of the street I dropped the bags, because they were heavy, and looked

around to see if Kip was around to help me. He wasn't.

I picked up the bags again and went around the corner and dropped them down again and took another look and I did see Kim this time on the other side of the street, on Times Square, and in order to meet him, to walk near him, I picked up the bags and walked across the divider in the middle of the block on the other side of the street.

The second I hit the curb sirens went off, I dropped the bags, and I was arrested by agents of the United States Bureau of Customs.

Q Now, after you were arrested, did you again see the defendant Stanton Freeman at the Hotel Diplomat?

A Yes.

Q Tell us the circumstances of that meeting.

A All right. The agents let me try to deliver the bags to Mr. Freeman.

Q Did you agree to do so?

A Yes, I did. And unhandcuffed me. I got the bags, walked into the hotel looking for Stan in the lobby, or in the club and went directly to the desk. And I asked the clerk there if Mr. Stanton Freeman was around.

He pointed to a white door on the other side of the lobby. He said, "He is in his office right now."

I left the bags at the desk and I walked over to the white door and knocked on the door. He said, "Hello. Come in." I stuck my head in the door. Stan was standing up and there was someone else behind the desk. He walked a few feet closer and I said, "The bags are here, Stan."

He said, "Is there heat?"

I said, "No." I mustn't have been very convincing.

He said, "Well, are you sure there isn't heat?"

I said, "There is no heat," and said the bags are right outside.

And he said, "Yes, I will be right out to talk to you in a few minutes."

I closed the door and went back out to the lobby. He didn't come out. I was handcuffed again and taken downstairs.

MR. FRIED: I have no further questions.

THE COURT: Mr. Beldock.

MR. BELDOCK: First of all, we haven't had a chance to look at the grand jury minutes. Before I ask for a recess for that purpose, can I ask Mr. Fried, through your Honor, whether

there are any notes of any conversations between this gentleman and any agents.

MR. FRIED: There are no notes in my possession. I have personal notes of when I first interviewed Mr. Davis. There are no notes of any case agent with Mr. Davis.

THE COURT: Do you have them with you now?

MR. FRIED: I have my notes, but I object to turning them over. The material is the attorney's work product.

THE COURT: May I see them.

MR. WALL: I will accept the recommendation, of course, from Mr. Fried, that there are no notes made by any agent after or contemporaneously with questioning Mr. Davis.

I would like to know whether there were any -- whether there were ever such notes which are no longer in existence.

MR. BELDOCK: May I have a voir dire on that question?

THE COURT: Let them be marked.

MR. FRIED: Let this be marked Government's Exhibit --

THE CLERK: How many pages are there?

MR. FRIED: These, your Honor, I made from my original notes. I believe I reduced --

THE COURT: Let me see it. I know lawyers always claim they are the work product.

MR. FRIED: These are notes, this set of documents, are my notes, and these are a distillation from those notes.

THE CLERK: Nine pages of counsel notes marked Government's Exhibit 47 for identification.

MR. WALL: Can I have the date of them?

MR. FRIED: I am not sure they are dated. If they are, it will be on the first page.

MR. BELDOCK: Before the grand jury testimony of June 26th?

MR. FRIED: They were.

Mr. Davis appeared in my office with counsel, and at that time I took notes as we were talking. From those notes I prepared grand jury questions.

MR. BELDOCK: What Mr. Wall and I --

MR. FRIED: I strenuously object to turning them over.

MR. BELDOCK: If your Honor is examining

them now I will hold my statement.

THE COURT: Turn 47 over to the defendants' lawyers. You have quotes around the conversations.

MR. FRIED: That is the way I make my notes.

THE COURT: I think they are producible. I don't think "work product" is the answer. Turn them over.

MR. FRIED: At this point I register my strenuous objection.

MR. WALL: May I have a very brief voir dire?

THE COURT: Do you know of any other notes that were in existence that were destroyed?

MR. FRIED: No.

THE COURT: Concerning this witness.

MR. FRIED: Mr. Levine is here.

MR. LEVINE: There were notnotes taken of Mr. Davis' statement.

THE COURT: Who wants to conduct a voir dire?

MR. BELDOCK: Well, we will get it through the examination. He said there are no notes taken.

THE COURT: Do you know of any notes any agent took while you were talking?

THE WITNESS: I don't recall.

MR. WALL: I wonder if Mr. Arkin took any notes during the conversation he had with Mr. Fried. I don't say they are producible, but I may phone up Mr. Arkin.

THE COURT: You have to ask this witness whether he waives his privilege --

MR. WALL: I don't see any privilege if the prosecutor is in the room.

THE COURT: Did you see Mr. Arkin, your lawyer, taking notes while you were talking to Mr. Fried?

THE WITNESS: I can't recall, but it wouldn't surprise me if he had.

MR. WALL: Mr. Fried, can you tell me?

MR. FRIED: As I recall, he was using his case file and used the case file while he was talking to the witness.

MR. WALL: I would like a brief recess.

THE COURT: Let's make it a brief recess.

MR. WALL: There are a lot of pages.

THE COURT: I thumb through hundreds of

pages sometimes in 15, 20 minutes or a half hour.

(A recess was taken at this time.)

FL 3/1

MR. FRIED: Judge Mishler, I'd like to ask one additional question, with the consent of the defendants.

Q Mr. Davis, after you were arrested and when you were brought to the office of the United States Attorney in the Eastern District did you place a phone call to Mr. Ornitz?

A Yes, I did.

Q Was that phone call recorded with your consent?

A Yes, it was.

Q And were the agents who made that tape recording in your presence?

A Yes.

Q And you had no objection to that?

A NO.

MR. FRIED: No further questions.

CROSS EXAMINATION

BY MR. BELDOCK:

Q Were you under arrest at that time?

A Yes, I was.

Q Had you spoken with your attorney?

THE COURT: You can't claim his right against self-incrimination.

MR. BELDOCK: No, your Honor, I'm not.

THE WITNESS: I can't recall --

MR. FRIED: Your Honor --

MR. BELDOCK: I'm not, Judge. I'm bringing out an atmosphere, part of an atmosphere.

THE COURT: What's the difference? You're not offering his concession.

MR. BELDORK: The Government is going to offer that phone call. That's why I just wanted to establish it.

THE COURT: He's not claiming that the consent was coerced.

MR. BELDOCK: No.

THE COURT: He has standing to claim whatever right he might have, so why go into it?

MR. BELDOCK: No, Judge, I just want to show that he was --

THE COURT: I know he was cooperating.

MR. BELDOCK: And under a lot of pressure, and hadn't spoken to an attorney.

THE COURT: A lot of pressure and --

MR. BELDOCK: And he hadn't spoken to an attorney.

THE COURT: -- he hadn't spoken to an attorney. If he weren't under arrest and weren't under pressure he might not have consented to have the wires tapped.

MR. BELDOCK: Not the consent, Judge, just the content of the call we haven't got in evidence.

THE COURT: The simple question is "So what?"

MR. FRIED: Your Honor, Mr. Wall and I spoke for a second, and we think it might be more efficient to play the tape recording now, and then Mr. Davis' cross examination could be both as to his testimony and the recording. It's a one-minute tape recording.

THE COURT: It's offered as an admission by Mr. Ornitz?

MR. FRIED: That's correct.

THE COURT: The only question is whether Mr. Ornitz's statement was voluntarily made, and not whether the consent was voluntary, because Mr. Ornitz's statement is being

offered in evidence.

MR. WALL: I thought it might be more convenient now, your Honor, to play the recording since I can't think of any conceivable reason it is inadmissible. I've thought about it for a while.

THE COURT: Well, if you think about it later, you just move to strike it from the record.

MR. WALL: Good. O.K., I'll do that.

THE COURT: Have you heard this, Mr. Wall?

MR. WALL: No, I haven't. I have seen the transcript of it.

THE COURT: May I follow it with a copy of the transcript?

MR. FRIED: Part of the problem, your Honor, is that the transcript, at least in one portion at the top of the second page, ascribes to the wrong parties the given statements, but I think --

MR. WALL: Well, we have corrected it, your Honor, in pencil, and I think it will be --

THE COURT: It may only help me to understand the tape, that's all.

Because sometimes it's unintelligible. All right.

MR. WALL: Can you hold on just one moment while I get the transcript out.

THE COURT: This is the tape of which Exhibit 32 is a transcript.

MR. WALL: You don't mind if I stand here, do you, your Honor?

THE COURT: No, go ahead.

(Tape played)

MR. FRIED: I'd like at this point to offer that tape.

THE COURT: Of what value is this?

MR. WALL: I didn't think of any objection? I didn't see anything to it.

MR. FRIED: It's offered as an admission, as a series of false, exculpatory statements by the defendant Kim Ornitz, contradicted directly by the testimony.

THE COURT: Well, this is the first time it's been offered where it was given to an individual who was not a police officer. Usually the false exculpatory statements relate to being charged with a crime.

MR. FRIED: Your Honor, the theory is the same here. This is --

THE COURT: He didn't say, no one said, "Kim, you are charged with a crime."

MR. FRIED: He said -- he described the circumstances and --

THE COURT: Well --

MR. WALL: In fact, he said exactly the opposite. He said --

THE COURT: Of very, very doubtful value, if any. Of no value at all.

MR. FRIED: Your Honor, it's a denial of knowledge.

THE COURT: At any rate, you can argue it another time.

MR. WALL: You can take it for what it's worth, your Honor.

MR. FRIED: I'd like to offer the tape itself, in any event.

THE COURT: May we suspend for just two or three minutes. I have something of importance.

THE CLERK: Tape so marked as Government's Exhibit 32-A in evidence.

(Recess had.)

THE COURT: All right. Cross-examination.

MR. BELDOCK: Yes, Judge.

CROSS EXAMINATION

BY MR. BELDOCK:

Q Mr. Davis, when you were first approached by the customs agents on the street on June 18, 1973, were you immediately -- Withdrawn.

Did the agents say to you when they first came up to you that day that, "You're under arrest"?

A Yes.

Q Did they say, "You're under arrest for importing cocaine"?

A Yes.

Q And during June 18th and June 19th and any days thereafter did you understand that you had been arrested as and were a defendant for the charge of importing cocaine?

A Yes, sir.

Q That's what the agents told you -- right?

A That's right.

Q And they told you, like you said in that phone call, that there were two keys of coke in that suitcase?

A Yes, sir.

Q And that you could take the weight for the whole rap for the two keys of coke?

A Yes, sir.

Q So that that's information that came to you from the agents on June 18th when they were talking to you -- right?

A Yes, sir.

Q You were scared out of your mind -- right?

A Absolutely.

Q You didn't know what was in that suitcase that you picked up -- right?

A No, sir.

Q You didn't know whether there were two keys or not -- right?

A That's correct.

Q Did they tell you how many years you could get for a charge like that?

A Yes, sir.

Q What did they tell you?

A Three counts of conspiracy, fifteen years apiece.

Q Who told you that, this gentleman?

A Yes, sir.

Q Let's see. What time were you picked up, around 5:00 or 5:30 that day?

A Approximately.

Q And then they took you over to the hotel and they went through that charade with Stan and then they took you down to Varick Street, is that right?

A That's correct.

Q From the time they first grabbed you and arrested you, they put you in a car -- right?

A That's correct.

Q And who was in that car?

A Jay Silvestro, Mike Levine, Joe King, several other agents, crowding around.

Q All in the car with you?

A Well, I was in about three different cars that day.

Q Let's talk about the time before you went back to the Hotel Diplomat.

A That's what I was saying earlier, that there were doors opening, agents looking in, Jay Silvestro, Mike Levine, Joe King, various agents.

Q Any weapons involved?

A Yes.

Q They drew weapons?

A Yes.

Q That was pretty scarey too, wasn't it?

A It wasn't much -- It wasn't much fun.

Q Now, between the time you were arrested at gunpoint, as you tell us, and brought to the Hotel Diplomat, these agents were talking to you -- right?

A That's correct.

Q And they were telling you the things we were discussing before --

A Yes.

Q -- right -- about how you could take the whole weight and what the charges were and about two keys of coke in the bag, and the smuggling, and so on -- right?

A That's correct.

Q That all went on in that car before you went over to the Diplomat?

A Yes, sir.

Q Right. And, incidentally, I've never spoken to you, have I?

A No, sir.

Q Mr. Freeman's -- no lawyer from Mr. Freeman has ever spoken to you?

A No, sir.

Q Well, let's just clear up the record: Has any lawyer for Mr. Freeman evern spoken to you?

A No, sir.

Q And since that day have you ever spoken to Mr. Freeman?

A No, sir.

Q About how long a time passed from the time you were first arrested until the time they had you go back to the Hotel Diplomat?

A About an hour.

Q In all that time, except for the transportation back to the hotel, they were talking to you and you were talking to them -- right?

A That's correct.

(Continued on the next page.)

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Davis - cross

Q Incidentally, when you made this call to Kim Ornitz on the next day, June 19, and you said to him, "The whole rap. There were two kis of coke in that suitcase, man," did you still believe that suitcase had two kis?

A Yes, sir.

Q And let's go back to the car. What did you say to the Agents in the car about what had happened?

A I told them what Mr. Freeman had told me to tell them at first.

Q That was about -- Let's see if I can -- Well, you -- You go ahead.

A All right.

Q What did Mr. Freeman tell you?

A Mr. Freeman told me --

Q He gave you a cover story -- Right?

A Right. Mr. Freeman told me to tell the story that I had just met a man in the Hotel Diplomat, and that I was down and out for money, and he approached me and offered me a $100 to pick up suitcases, which is a totally unbelievable cover story.

Q Not very professional?

A No.

Q Anyhow, that's the story that Freeman had suggested to you just before you went over -- Right?

A That's correct.

Q He said if you had any trouble you should say that a man gave you money in the Diplomat, and you were to bring the bags back there?

A That's correct.

Q And you didn't know who he was?

A That's correct.

Q That's what you told the Agents?

A That's what I originally told the Agents.

Q Now, they didn't believe that, obviously -- Right?

A Not at all.

Q And they put some pressure on you in some way. What did they say to you?

A They said that they were just after the chick, and that I was obviously the man they were looking for who had the information about the chick, and that I better speak up, baby, or -- you know, or else. And it was terrifying. It was the real thing.

Q And did you say anything more to them about what had happened?

A I told them that I had just come in from Colorado, and that I had met Stan Freeman through a friend of mine named Kim Ornitz, and Stan offered me 60 bucks to go -- He had given me 60 --

Q Gave you 60?

A He gave me 60 bucks to go pick up the bags. That if I could get over there and deliver the bags, they might find : was true.

Q Let me see, I broke into what you were saying. That if you could get over there and deliver the bags --

A He might accept them. He -- He would accept the bags.

Q Oh, the Agents said this to you?

A No, no, I said this to the Agents, I told them, "Look, if you let me go over there with the bags, I'll give them to him, you can see for yourself."

Q So you told them that Stan had given you the $60 to go over and pick up the bags, and then you suggested that you go over to the hotel and bring them, and Stanley would accept them -- Right?

A To exculpate myself, yes. Exculpate --

Q You were trying to tell them, look, you had nothing to do with this, except at the Hotel Diplomat, when you agreed to go over and get the bags -- Right?

A That's correct.

Q Did you tell them at that time that when you had spoken to Mr. Freeman before going over to the Paramount, he had said to you that there might be some coke in the bags?

A That's right.

Q There might be about three grams, as he understood?

A Did I tell them this?

Q Yes.

A No, no, I didn't.

Q So when you said, "That's right," before, you were saying that what I was saying was what Mr. Freeman had said to you?

A That's right.

Q Let's take it chronologically from what happened in the car.

A After you made the offer to the Agents to go over there, was there any more conversation about this, or did you just go over there?

A No more conversation. Just -- We just went over. They had to stake the place out. So they parked me up two blocks, left me in the car handcuffed, and they took care of their business. And then a couple of Agents came up and got me and brought me back down to the hotel and unhandcuffed me right out in front of the hotel, and I went into the hotel with the bags.

Q Up to this point, you hadn't said to the Agents anything to the effect that you understood there might be some coke in the bags?

A No, I hadn't.

Q Now, you are in the hotel, and --

A Okay.

Q (continuing) -- you go over, and you locate Mr. Freeman -- Right?

A I went over to the clerk's desk.

Q Let me ask you this: When you went over, knocked on the door where you expected Stan Freeman was there, did you actually go in, or did you just go to the edge of the door?

A Went to the edge of the door.

Q And when Freeman came out --

A He walked closer to me. He was about ten feet from me.

Q You were at the edge?

A Yes, sir.

Q And when he saw you, do you remember him saying to you in a loud voice, "Jim ain't here"?

A Not at all.

Q No?

A No, sir.

Q Do you remember him saying in a soft voice, "You were followed from the subway"? "You were followed"? Something like that?

A No, sir.

Q So he just asked you whether there was heat, and he'd come out and get the bags?

A That's -- In words to that effect. I don't think I had

convinced him in the least that there was no heat on the bags, because at that point I looked like -- I looked like hell.

Q At that point you were very frightened, very upset -- Right?

A Yes. And I left the bags -- I should have just taken the bags to the door, said, "Here they are." It would have been more convincing than had I left them out in the lobby. But I was so mixed up, I -- There was nothing I could do, I just forgot them. Ridiculous.

Q After this, what happened? What happened to you physically after this?

A Well, I went back out into the lobby. They closed the door. I closed the door. And they put the handcuffs on me in the lobby, took the bags downstairs, and we waited in front of Stan's club.

Q And ultimately Stan came along -- Right?

A Ultimately Stan came along with another person.

Q And you didn't talk to him there at that time?

A No.

Q Okay. Now, after a while you were taken down to Varick Street to be booked, I take it -- Right?

A Yes, sir.

Q And you were there --

A Or fingerprinted. I was fingerprinted.

Q And charged with this crime?

A I guess I was. I can't really recall whether I was charged there or the next day, or at the Federal House of Detention, or you name it.

Q Ultimately they took you to a detention pen -- Right?

A That's correct.

Q Now, from the time that we were talking about at the Hotel Diplomat, to the time that you got into the detention pen, did you have any further conversations with the Agents about this case? Did you tell them --

A No.

Q (continuing) -- anything more about what had actually happened?

A No. Basically, it was just -- If anything was said at all, it was the same stuff, but I can't even remember doing it. We were talking about other things at that point. Just life.

Q Well, the next day, you were brought to Mr. Fried's office, weren't you?

A Yes, sir.

Q And at that time, weren't you asked some questions of some sort by Mr. Fried or the Agent about this case?

A Yes, I was.

Q And this is an office in this building?

A Yes, sir.

Q And ultimately you made this phone call as a result of that -- Right?

A Yes.

Q Well, did you tell Mr. Fried and Mr. Levine -- Was it Levine who was there that day?

A Yes, sir, Mr. Levine was.

Q Sylvester?

A Sylvester, I believe, was there.

Q Did you tell them anything more than you told the Agents the day before?

A That I cannot recall. I imagine that with the sitting down at a desk and everything, I was a little more thorough about it than --

Q Well, didn't any of them tell you at that time that they had found cocaine in that bag?

A Oh, yes, they told me they found cocaine in it, but they hadn't told me how much.

Q So you still thought it was the two kis the Agents talked about -- Right?

A That's correct.

Q Now I want you to think back to that day. Did either -- Did any of the persons there have any pads, pencils and paper in front of them?

A I think Mr. Fried was the only man taking notes.

MR. BELDOCK: I would like those notes, please.

MR. FRIED: Your Honor, I have turned over all the notes that I have. I don't have any independent recollection of those notes --

THE COURT: Mr. Beldock, that's the statement that is on the record. It is so marked.

MR. BELDOCK: I don't believe -- Of course, and I'll make it clear -- I don't believe that Mr. Fried is withholding any notes from me. We have not had that kind of relationship, that's all. If they have gone the way of all flesh, they have, or if they don't exist, I have to accept the witness' statement, and Mr. Fried's statement. I don't want to make any other interpretation.

Q That would have been June 19th we are talking about -- Right?

A Yes, sir, June 19th.

MR. FRIED: Are those my notes?

MR. BELDOCK: Yes.

THE COURT: Do you have any further questions of this witness?

MR. BELDOCK: I have some, Judge. I am sorry.

THE COURT: All right, let's go on with the questioning, please.

Q Subsequent to the day you were at Mr. Fried's office, did you have any further conversations with Mr. Fried or the Agents prior to the time you met with the lawyer?

A Subsequent -- Would you repeat that?

Q After June 19th, the time you are just telling us about, in Mr. Fried's office, when you made the phone call that's in evidence, did you have any further conferences or conversations with any of the Agents, or Mr. Levine, until you saw a lawyer?

A No, sir.

Q And was the next conference on an occasion after you had seen and spoken to a lawyer?

A Yes, sir. As a matter of fact, one of my two lawyers, Mark Harrison of Arkin and Horan, came down for my arraignment. That was the first time I managed to be able to see a lawyer, where my bail was set at $250,000, originally. That was the Tuesday of the 19th.

And he just told me to shut up and he'd do the best he could, things didn't look too good.

And the next day I met Mr. Arkin at the Federal House of

Detention, he came down.

Q Don't tell us what you did, but you had a conference with him -- Right?

A Right.

Q And you understand as a result of that conference you ended up some days later in Mr. Fried's office -- Right?

A Right.

Q About 2:00 o'clock in the afternoon?

A I believe so, yes, sir.

Q Would I be right in saying it was two days after the 19th, June 21st?

A Well, that's the day -- That's the day that -- That's correct, it was that.

Q And that's the only other time you had been at Mr. Fried's office before preparation for this trial -- Right?

A That's correct.

Q And about how many hours did you all spend together?

A Oh, an hour in -- in there, and then I went down to get arraigned, and eventually got bailed out.

Q I'm talking about the 21st, when Mr. Arkin --

A That -- That was the day. It was a Thursday when I met with Mr. Arkin, Mr. Harrison, Jay Sylvester, my parents and my sister in Mr. Fried's office. And that was the last time

I saw Mr. Fried before this week.

Q Except that you saw him when you went before the Grand Jury -- Right?

A Oh, that's right, that's right. That was --

Q You had a conference with him then?

A That's correct, with Mr. Arkin present.

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Q And then you testified at the Grand Jury, and now since then had you spoken to Mr. Levine or Mr. Silvestri or any of the agents?

A Since then?

Q Yes.

A Well, up in Mr. Fried's office we just sit around, we don't talk about the case. We talk about the New York Times.

Q Okay. Let's leave it at that.

Have you reviewed, actually read your Grand Jury Minutes over, before you came here?

A Yes I did, and --

Q All right, now let me ask you this: I just read them, and I see that -- let me ask you if you reviewed them and I reviewed them, do you remember that throughout that examination Mr. Fried kept asking you questions in which he put in the information that he expected from the answer, and then you just had to answer yes?

A That's correct.

Q That's the way it went almost all the way down the line -- right?

A Right.

Q You didn't have to practically say anything about what happened, you just had to respond when he asked you did such and such happen, did so and so say such and such;

you just said "no" -- right?

A That's correct.

Q Okay, let's go to the hotel now before the agents burst upon the scene. Your name is John Spencer Davis, of course?

A Yes.

Q Now, how are you known generally speaking?

A Jock.

Q You got on the phone -- Well, how do you identify yourself when you speak to people?

A Jock.

Q Jock Davis?

A Right.

Q You don't say "This is John Davis," do you?

A No.

Q And by any chance you didn't call the Hotel Paramount on June 18th about these bags, did you?

A No sir.

Q You had no plan even to get together with Kim Ornitz specifically on that day?

A Well, I had told Kim ---

Q That you'd be back in town?

A -- that I'd be back in town, like -

Q And then you called him up just before, about

12:30, 12:45 you said on direct?

A Yes sir.

Q And the whole conversation was the one you told us about?

A Exactly.

Q And you were just planning to come in town to be with him?

A That's exactly true.

Q And when you met him that afternoon in your house there was the discussion about meeting with Wanda, and it was decided to go over to a Japanese Restaurant called the Ito -- right?

A I believe so.

Q And that was on 46th Street near Fifth Avenue, you were headed in that direction -- right?

A I don't know where the location was.

Q Anyhow when you got out of the Times Square Subway you were headed over towards -- you were headed slightly uptown and west?

A I -- well, we obviously were, but I had no idea where the restaurant was.

Q Well, as you were going west you hit the Diplomat street, which is 43rd Street, is that right? Do you remember that?

A Yes sir.

Q And as you came by Kim suggested that you might go in there?

A Right.

Q That his friend Stan had just opened a club?

A Or it was opening the next day. He might be hanging around.

Q And you had some conversation about a snort -- right?

A That's right.

Q Then you went in and there was this conversation that you told us about at the coffee shop, and Stan asked him to step aside?

A Yes sir.

Q Then there was a conversation that you told us about with Stan where you say you turned it down?

A At first.

Q At first. In that conversation when Stan was talking about the bags, you said on direct that there was just a dash, there might be just a dash of coke?

A Or else --

Q And that a quantity was suggested - right?

A Or, as I said today, it might be up to five grams of coke.

Q But this is what Stan said, that it might be -- right?

A That's correct.

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Q He said he didn't know, isn't that right?

A He didn't -- I was under the impression he did not know, but he --

Q Were you given to undertsand from Stan that there might be three to five grams, that that's what he thought?

A That's -

Q But he didn't know?

A That's my opinion, I believe what his opinion was.

Q And in the part of the conversation when you decided to go along with it, Stan was saying he was doing a favor for someone, right?

A Yes, that does strike a bell.

Q That he -- that in doing that favor there might be some coke in the bags and that you all could keep it if there was coke there, words to that effect?

A Well, he didn't say that we could keep it. He said he might give us a -- a gram or some money or --

Q Whatever the exact conversation was, was it your understanding that if there was some coke in the bags that the bags were to be given to the friend, whoever it was and that you people could share? Was that the understanding?

A Well, my understanding about it was --

Q You say there is more conversation. I want to know if that's a fair statement of what went down there that day?

A It's a fair statement.

MR. BELDOCK: Excuse me for a moment, Judge.

THE COURT: Beg your pardon?

MR. BELDOCK: I would just like a minute now to see what I can cut out. I may have some more but I want to cut out as well as I can.

Q Yes. Did Mr. Freeman a number of times say to you that -- words to this effect, "The hotel might be watched, he didn't think so but he didn't know?"

A That's correct.

Q Do you even remember his saying -- saying "God forbid that it shouldn't be watched," words like that, and that was a prelude to him talking about the story?

A Of course, that's almost three months ago, but -- I can't say for sure, but it could be true.

Q When you went to Mr. Fried's office with your lawyer and Mr. Fried was writing -- right, taking down the story?

A Yes, sir.

Q You didn't just tell the story chronologically

step by step, did you? They interspersed questions, they said, "That happened?"

A Well, I was trying to piece it together and --

Q Sometimes they would ask you a question and you would put back another piece, right?

A That's correct.

Q Jigging and jogging around, right?

A Well, it seemed to follow some sort of chronological order as far as I can recall, but of course you go over something and then remember something and go back to it. That -- that's basically how it went.

Q In the course of that sometimes did either Mr. Levine or Mr. Fried or Mr. Arkin say to you, "Well, did something like this happen" or "Don't you remember something like that?"

A I can't really recall. I really can't. I'm thinking hard.

Q When you made the phone call to Kim Ornitz there were certain things in it that were lies, weren't there?

A Yes, sir.

Q And am I right in saying that you made those lies because you wanted to cooperate with the Government, and you were scared for your future as a result of this

case?

A That's correct.

MR. FRIED: I object to it, your Honor. The witness earlier testified that--

THE COURT: May I have the question and the answer please?

(Question read.)

MR. FRIED: Judge, it's the question before that in which you were asked --

MR. BELDOCK: I asked throughout the phone call to Mr. Ornitz.

MR. BELDOCK: Yes. And I --

THE COURT: Do you have an objection, Mr. Fried? Will you please make it?

MR. FRIED: I object to the form of the question.

THE COURT: Objection overruled.

Anything further?

MR. BELDOCK: I haven't got any further questions, your Honor, that I can --

THE COURT: All right, Mr. Wall.

MR. BELDOCK: I haven't had a complete opportunity to review Mr. Fried's notes but I will defer to Mr. Wall on that for the moment.

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CROSS EXAMINATION

BY MR. WALL:

MR. WALL: Excuse me, just one moment, your Honor.

Q Mr. Davis when you saw Kim Ornitz on the 15th of June, how long had it been since you had last seen him?

A Oh, I guess just about a year, maybe a little less.

Q And after having seen him on the 15th you left and went back to Long Island, am I right, or did you go to Connecticut?

Q No, sir, I went to Connecticut to my girl-friend's house.

Q And you didn't make arrangements with him then to see him on Monday, did you?

A No, but I told him there is a good chance I will be coming back through New York, I'd like to see him and if so, we could go out and have some dinner because he'd been kind enough to take me out to dinner on that Friday night.

Q So you first mentioned the possibility of taking him out to dinner on the Friday?

A Yes. Well -- yes, that's right.

Q And around 12:45, 12:30, 12:45 on Monday you confirmed what you had previously said was a possibility,

that you would be in the city?

A Yes, sir.

Q You got the one o'clock train down from New Haven?

A Yes, sir.

Q And what time did you say you saw Kim Ornitz at the Riverside Drive apartment on Monday?

A I got there approximately four o'clock quarter, quarter of four or something like that. I can't remember when the train came in but it was around the four o'clock area.

Q Had he told you on that phone conversation that he could be back there at about that time, but he had gone to pay rent on a new apartment?

A That's right.

Q Did you have to wait for him when you got there or was he already there?

A He was already there.

Q Now, there has been reference made to a Japanese restaurant.

A Yes, sir.

Q Do you recall who first mentioned the subject of a Japanese restaurant?

A I did, I think.

Q Did he then tell you that there was a very good Japanese restaurant right around the corner from where his girlfriend Wanda worked?

A That's correct.

Q And the two of you then agreed that Wanda would go along for dinner?

A Yes, sir.

Q And you had agreed, I take it, to pay for Kim's dinner that night?

A That's right.

Q And so you went in the subway down to the Times Square area because that was the closest stop near where Wanda worked and the Ita Restaurant was?

A That's correct.

Q And as you walked from the subway in the general direction of Wanda's office -- and by the way, do you know what office she worked in?

A No, I don't.

Q Do you recall Kim ever telling you that her office was at Fifth Avenue and 46th Street?

A I don't recall that. He may have told me but I don't recall it.

Q Did he mention to you where the Ito Restaurant was?

A No, he didn't. He just said it was in the Times Square ara.

Q But you, during the course of your walk in the general direction of 46th Street, passed by the Diplomat, am I correct?

A Yes, sir.

Q And going back to Friday, or earlier on the day of Monday before you got to the Diplomat, had you made any inquiries of Kim as to whether or not he knew of anyplace where you might be able to get some coke?

A I had done that on Friday.

Q Right?

A That's correct.

Q And then you were walking along past or near the Diplomat and then you say that -- what did Kim say, did he say he had a friend named Stan Freeman?

A Yes, he said you have heard of Stan Freeman, or in words to that effect. "You have heard of Stan Freeman. Well, his club is right around the corner here, we're passing by, we'll go in and see if we can get a blow of coke."

Q Did he say he wanted to show you the lay-out --

A Yes.

Q -- of the club?

A Yes, he did.

Q And did he tell you Mr. Freeman previously had owned another very successful club in New York, the Electric Circus?

A Yes. I knew that anyway but he told me.

Q Now, after you knocked on the doors or the door of Les Jardins you found them closed and no one there.

A That's correct.

Q And is it a fact that when no one was there Kim suggested to you, "Okay, let's go to the Japanese Restaurant?"

A That's right.

Q Am I right?

A Yes, sir.

Q So that having found the doors of the club locked it was Kim's suggestion that you not see Stan, not see the club and head then for the Japanese restaurant?

A Yes, sir.

Q And as you were going out the lobby of the Diplomat either he saw Stan Freeman sitting at the -- in a coffee shop or Stan saw Kim?

A Right.

Q And they signalled to each other?

A It was a mutual contact.

Q But it is clear, -- withdrawn.

Now, you listened to at least the conversation in the coffee shop and you said that was general conversation about the club?

A From what I can recall, yes, sir.

Q And is it your recollection that the drift of that conversation was that the club was about to open?

A Yes, sir.

Q Or that it already had opened?

A It was about to open but Kim had told me that on the street, that maybe where I am getting that from because I can't really distinguish between the two, you know. All those facts. What they were talking about in the coffee -- table of the coffee shop from what I remember and believe is that they were discussing the club's opening the following night.

Q Now, the conversation which took place in the lounge after you had your coke, you say that initially you sat next to Kim, am I right?

A Yes, sir.

Q And that Stan indicated he wanted to have a chat with you?

A Yes, sir.

Q And ask you to sit next to him?

A That's correct.

Q Now, that was on an L-shaped couch Diplomat, wasn't it?

A Yes, sir.

Q And when you went and sat next to Stan that put you on Stan's left-hand side.

A Far -- on the far side of Kim.

Q And Kim was on the other side of him, am I right?

A Yes.

Q And it was there, I take it, that you first learned of any bags to be picked up?

A Yes, sir.

Q And first learned whatever it was that you were told by Mr. Freeman on that occasion?

A Yes, sir.

Q Do you recall whether or not -- withdrawn.

How long did that conversation take for you to be given the information that you got from Mr. Freeman?

A This is before I went out to the marquee.

Q Yes, I'm talking now just about the conversation on the L-shaped sofa in the lounge of the Diplomat.

A Between five and ten minutes. It was relatively short.

Q You would talk to Mr. Freeman and Mr. Freeman

would talk to you?

A That's correct.

Q You turned down the proposal, correct?

A Yes, sir.

Q And Mr. Freeman, in words or in substance said, "That's okay, because I had already made arrangements with some girl to pick this up?"

A That's right.

Q And then out at the marquee as you and Kim are preparing to go either to Wanda's office or to the Japanese restaurant you are asked once again by Mr. Freeman, is that correct?

A Yes, sir.

Q And you then agreed to do it?

A Yes, sir.

Q About how long did that convesation take?

A Four or five minutes.

Q Can you give us your best estimation as to what the -- what time of the day it was when you finally agreed to go get those bags, which as you had been told, might have someone watching them and might have some cocaine in them?

A Certainly, it must have been right around five o'clock. I really -- I have no perfect recollection of it.

Q Had you heard from Mr. Ornitz prior to this time as to when he was supposed to meet -- when the two of you were supposed to meet Wanda was her quitting time?

A Not that I can recall.

Q Do you recall her quitting time?

A Not really. It -- I cannct really specifically say.

Q Do you recall where, between what avenues the Diplomat is on 43rd Street?

A It's between what, Seventh and Eighth? Or Broadway and Seventh.

Q Sixth and Seventh? Sixth and Broadway?

A I think Broadway is one of the adjacent streets.

Q And now you know that the Paramount Central Hotel, the hotel to which you were going to go is on 46th off of Broadway, isn't it?

A I guess it is, yes.

Q So you had approximately a three-block walk up Broadway and then you'd have to turn left, would you?

A Yes.

Q Walking uptown to get to the apartment?

A That's right.

(Continued on the next page.)

MP:GA
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Q Kim didn't want to go in there with you?

A That is correct.

Q When you came out, you looked around to see if Kim was there, and you didn't see him first?

A Yes.

Q You began walking back to the Diplomat?

A Yes.

Q Was it your assumption that Kim had headed over to pick up Wanda and meet you at the hotel?

A No. Really, I figured he would be still outside.

Q He was not?

A No. Until I saw him on the street.

Q Did you wave to him?

A I motioned to him to get over here, the damned bags weigh about forty pounds apiece. That's what I was thinking, I didn't say that.

Q Where was he when you saw him, then, in relation to where he had been when you saw him last, before going into the Paramount?

A On the same side of the street. I left the side of the Paramount, and he was 75 yards up the street.

Q Do you recall whether he was near a phone booth, or at a phone?

A I don't recall exactly, no. He was up against a wall

there. There might have been a phone booth.

MR. WALL: Excuse me one moment, your Honor.

(Pause.)

MR. WALL: I am sorry, your Honor.

Q When you made the phone call to Kim on the morning of the 19th, you told him to come on down to where you said you were, at the House of Detention, right?

A Yes.

Q And make an explanation, because once the explanations were given, you would be out of trouble, and so would he?

A Yes.

Q Were you told by anyone to tell him if he was to make that explanation, it would not only help you get out of a jam, but not implicate him in any wrongdoing?

A I was told that it would help get me out of a jam, and I believed he had nothing to do with it, therefore I made that statement.

Q So that at the time you made the call on the 19th, from everything you had learned up until that time, that includes your conversations with Mr. Ornitz, and with the Agents, on the basis of what you knew, you did not believe that Kim had had any prior knowledge of the existence of the bags?

THE COURT: This has no value at all.

What he believes Kim knew.

MR. WALL: The question I put has a different purpose. The question I put was whether or not when he made the statement he had been asked to make that statement by the authorities.

THE COURT: That only has to do with that telephone call, it has nothing to do with the state of mind.

MR. WALL: I am trying to find out whether or not when he made the statement he had had any contact with Mr. Ornitz which would have caused him to believe Mr. Ornitz had knowledge, or did Mr. Ornitz ever say that to him.

THE COURT: I will allow that question.

Q Up until the time that you agreed to go get the bags, Mr. Ornitz had not said anything to you which would lead you to believe that he had any prior knowledge of the existence of those bags?

A No, he had not said anything.

MR. WALL: That may be my last question, if you just bear with me a moment.

(Pause.)

Q When Kim made the phone call from his mother's apartment, just before you went downtown, he told you he went

and made arrangements to meet Wanda for dinner that evening?

A That's right.

MR. WALL: I have no further questions.

THE COURT: Any questions?

MR. FRIED: I have just three questions.

REDIRECT EXAMINATION

BY MR. FRIED:

Q Mr. Davis, were you told by anybody on the 19th to tell Mr. Ornitz on the telephone that the suitcases had two kilograms of cocaine?

A No, I was not.

Q When you earlier stated that you had lied about this, had you done so, knowing that is what those suitcases contained?

A Excuse me?

Q You stated on cross-examination that you had lied about the quantity of cocaine?

MR. WALL: No, I object.

MR. BELDOCK: I object.

MR. WALL: I am objecting to the form because it contains an assertion of testimony not given.

THE COURT: Read the question.

(Whereupon, the last question was read by the Reporter.)

MR. WALL: The question Mr. Beldock put was whether or not he told certain lies.

THE COURT: Sustained as to form.

MR. WALL: Thank you, your Honor.

THE COURT: Mr. Beldock asked a general question about all those lies in the conversation. I will allow an examination on that.

Q Mr. Davis, when you made that phone call, were you told by anybody what was in the suitcases that had been seized by you, or had you any prior knowledge of it?

THE COURT: Seized from you.

Q Yes, from you.

A Had I been told what was in them?

Q Yes.

A Not that I recall. Except, Mr. Levine said there was two kilos, but he did not tell me to tell anybody. It was my way of expressing -- I was under the impression there were two kilos of cocaine in those bags. As I testified earlier, that couldn't have just -- I didn't formulate it in my mind, I was told.

Q Were you told to tell Mr. Ornitz on the telephone by anybody on June 19th, 1973, that there was two kilos of

cocaine in the bags seized from you?

A No, not at all.

MR. FRIED: No further questions.

THE COURT: Anything further?

MR. WALL: No.

MR. BELDOCK: No.

THE COURT: You may step down.

That's the Government's case?

MR. FRIED: No, the Government would still call -- the Agents, Mr. Silvestro and Mr. Levine, and I would like to offer a witness on the issue of prior similar acts concerning Mr. --

MR. BELDOCK: I object.

THE COURT: Wait.

MR. FRIED: Concerning the defendant, Freeman. And at this time, prior to putting the witness on, because we have a non-jury trial, I believe it is admissible under Deaton. The issue in this case would be knowledge and intent, and I request --

THE COURT: Prior similar acts.

MR. FRIED: Your Honor, there is a witness --

MR. BELDOCK: May I consult with Mr. Wall

7

before he responds?

MR. FRIED: I have a witness who will testify that in the fall of 1971, which is fourteen months prior to these occurrences, rather October, 1971, the defendant, Stanton Freeman, sought to solicit a large quantity of cocaine for resale on a regular basis. The solicitation was not consummated, and the transaction was never finalized.

THE COURT: That is only under the most unusual circumstances. I feel that usually is rebuttal testimony when the witness has testified. Here, it is clear, I believe, in the questioning of counsel, that the defendant claims that -- and he concedes -- that he asked that these two valises be held at the Paramount Hotel, and he was only trying to do a friend a favor, and it was absolutely unconnected with the Conspiracy and attempt to hide someone who was closely tied up with the importation.

I think under the extraordinary facts in the case, I think it comes under Deaton. I think proof of prior similar acts would be admissible.

MR. BELDOCK: Well, we would like to speak

8

about that, and I would like to have Mr. Wall speak first.

THE COURT: It only has something to do with Mr. Freeman, and I don't see why Mr. Wall --

MR. BELDOCK: I prefer he speak first because he said he has done some research on it.

THE COURT: If you think you've done research on that, you hold off for three seconds, and I will show you the research I have done on it.

(Recess taken at this time.)

THE COURT: In the latest I have on the question, our Circuit on May 22, 1973, in United States against Miller -- and our Circuit is more liberal in introducing prior similar crimes than others, and that includes subsequent crimes, too, the Court said that the evidence that could be introduced to show the organization structure of the larger conspiracy, and to show that the appellant was not merely an innocent participant in the robbery.

There, they suggest the Court might give a limiting instruction.

In United States against Bradwell, which

is cited in Deaton, which cites Bozza, where they permitted evidence of other similar --

MR. BELDOCK: What is the citation of that?

THE COURT: 388 F.2d, 618: like several Federal Courts of Appeals, we hold rather that the evidence of another crime may be admitted if it is substantially relevant for some purpose other than to show probability that the defendant "committed the crime on trial, because he is a man of criminal character." With admission to depend upon the trial Judge's appropriately balancing on the one side, the actual need for the other crimes' evidence in the light of the issues, and the other evidence available to the prosecution, the convincingness of the evidence that the other crimes were committed, and that the accused was the actor, and the strength or weekness of other crimes' evidence in supporting the issue, and on the other, the degree to which the jury will probably be roused by the evidence to offer mastering hostility.

So I say, a non-jury trial eliminates that danger.

I think the best statement of the attitude

10

is in United States against Keilly, 445 F.2d, 1285. The rule of this Circuit is the inclusory form which holds evidence of other crimes is admissible except when offered solely to prove criminal character.

BS fls

(continued on next page.)

BS/LH
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THE COURT: I will allow it. It is one of the subjects that I keep up to date on, in constant touch with.

MR. BELDOCK: I would like to make a preliminary argument to the question of admissibility in regard to the standard.

As I understand the cases, before the Government can properly offer such proof of alleged prior acts there must be independent evidence in this case connecting the defendants sufficiently with the conspiracy.

Now, I say to your Honor that on the evidence up to now, which I represent, except for the agents and whatever they may say about what the clients said and so on, is the only evidence the Government will produce from their witnesses -- up to now there has been no independent basis for you to get to the question of prior bad acts because the evidence before your Honor --

THE COURT: You don't have to argue that because I know of no rule which supports that theory.

MR. BELDOCK: I thought that was --

MR. WALL: If I may briefly make a point,

your Honor?

THE COURT: Sure.

MR. WALL: It seems to me that before evidence of prior similar acts or prior bad acts is admissable, there must be some sor of ambiguous conduct on the part of a particular defendant that becomes and issue. And here I suggest, and grant you, I have been paying more attention to the evidence with respect to Mr. Ornitz, there is no reference, as a matter of fact, to Mr. Freeman in this case, until long after -- long in terms of the way these conspiracies go-- until after the seizure of the drugs. Nobody here has said anything with respect to any involvement. In fact, the evidence appears that it comes as a surprise to Mr. Freeman what happened later.

THE COURT: There is this kind of proof, that Mr. Freeman said that the girl bringing in the cocaine was arrested. She was "busted," they said, and that he was trying to help another one, apparently Rosalys Rudner, out of the country.

MR. WALL: I didn't hear that in the testimony. The only thing I heard was testimony

3

that there was somebody that they were trying to help --

THE COURT: Hide.

MR. WALL: Help hide or get out.

THE COURT: Hide, yes.

MR. WALL: But no reference was made to any arrest. That was not the testimony from Mr. Davis.

THE COURT: I thought there was testimony that he knew that Tambini was arrested and that he was helping hide somebody to get out of the country.

At any rate, I will take the testimony. I think there is nothing here, even on your theory, Mr. Wall.

MR. FRIED: May I call the next witness, your Honor?

THE COURT: Yes. I thought you wanted to get away.

MR. FRIED: He is here. His testimony will be very short. I don't anticipate more than ordinary cross-examination of the witness, and I am willing to stay.

THE COURT: Ordinary cross-examination?

4

MR. FRIED: If I am wrong, then unfortunately --

THE COURT: I will stay, I don't mind.

MR. BELDOCK: We can expedite this matter. Your Honor has apparently made your mind up, but I don't want, in case there is --

THE COURT: I haven't made my mind up. I want to hear the testimony.

MR. BELDOCK: May I argue afterwards, at least?

THE COURT: Anytime.

MR. BELDOCK: So I have not been put in a position of waiving a particular argument.

THE COURT: Yes.

M A R C E T R A, called as a witness, first being duly sworn, testified and follows:

DIRECT EXAMINATION

BY MR. FRIED:

Q Mr. Etra, will you tell us your address, please?

A My address is 51 Dean Street, Brooklyn.

Q Will you tell us how old you are?

A Twenty-four.

Q Mr. Etra, have you recently pled guilty to the crime of conspiring to import cocaine into the United States?

A Yes, sir, I have.

Q Where did you plead guilty to such a charge, before which court?

A Judge Bartels.

Q Is that within the United States District of the Eastern District of New York, in Brooklyn?

A Yes.

Q Will you tell us the date on which you pled guilty, if you recall?

A No, I don't.

Q The month that you pled guilty, I don't have the note in front of me, I'm sorry?

A This month.

Q Was that September, 1973?

A Yes.

Q The charge that you pled guilty to, how much cocaine was involved in that case?

A Three pounds.

Q Can you tell us where that cocaine came from?

A Bogota, Colombia.

Q Mr. Etra, do you know any of the defendants sitting at that table?

THE COURT: Do you know anyone sitting at that table?

THE WITNESS: Yes, I do.

Q Can you tell us who you can identify, and please do so?

A Stan Freeman.

Q Will you point him out, please, for the Court.

THE COURT: What is he wearing, dark suit --

THE WITNESS: Light suit, light tie.

THE COURT: Let the record show the witness pointed out the defendant Stanton Freeman.

Q Mr. Etra, do you know anybody else at that table?

A No.

Q In September --

MR. BELDOCK: I object. He is leading him and telling him when.

THE COURT: Overruled. I will allow it.

Q In September, 1971 did you have occasion to meet Mr. Freeman?

A Yes, I did.

Q Can you tell us the circumstances that led to that meeting?

A Yes. Mr. Freeman called me, it was concerning some audio equipment he was trying to sell.

Q Where did you receive the phone call?

A I was living at 232 Clinton Street, Brooklyn.

Q Upon receipt of that phone call, can you tell us what you did, if anything?

A Yes. I arranged to go and see the equipment at Mr. Freeman's place of residence.

Q Mr. Etra, where did you go?

A Perry Street in Greenwich Village.

Q Do you know the number of the house that you went to?

A I believe it was 62 1/2.

Q When you arrived at Perry Street, were you alone?

A Yes, I believe I was.

Q Did you go inside the house at Perry Street at that time?

A Yes, I did.

Q Who was there, if anybody?

A Mr. Freeman was there, I believe he had a girlfriend there.

Q Do you know what her name is?

A Let me think. Sara Kennedy, I believe. And I believe there was one other person there, who I do not know.

Q At this time, do you recall the time of day?

A It was late afternoon, early evening.

Q Can you tell us what if anything you said and

what if anything was said to you, as you recall, on that evening.

THE COURT: Had you known Mr. Freeman prior to that time?

THE WITNESS: No, I did not.

THE COURT: You did not know him, never did business with him?

THE WITNESS: No. As I understood it, he had gotten my name from some people in the music business, or some close friends, and that's why he had called me.

At that point I looked at the equipment and specifically at turn tables and a microphone I was interested in, and I believe that there were some cocaine produced, I believe it was mine, which we used at that point.

BY MR. FRIED:

Q At that time, Mr. Etra, were you importing cocaine?

A Yes, I was.

Q Continue, please.

A Well, Mr. Freeman made it known to me that he would be interested.

THE COURT: What did he say, do you recall

his exact words, or tell us substantially what he said.

THE WITNESS: Substantially that he would be interested in obtaining large quantities of cocaine, if it was possible that I could deliver such quantities to him, on a fairly regular basis.

BY MR. FRIED:

Q What was your answer to him?

A Well, there was nothing definite. I said yes, there was a possibility of it, that there were other people I had to talk to and that I would get back to him.

I believe at that point we arranged to have some samples delivered, a small quantity, approximately a gram, I think, or two.

THE COURT: Did you deliver the gram to him?

THE WITNESS: Yes. I was there twice more and one of those times I delivered a small bottle.

Q Did you at this time purchase the audio equipment that you had earlier referred to from Mr. Freeman?

A Yes, I did.

Q Do you recall how you paid Mr. Freeman?

A Yes, I gave him a check.

MR. FRIED: I would like this marked as

Government's Exhibit 48.

THE CLERK: So marked for identification as Government's Exhibit 48.

(So marked.)

Q Mr. Etra, I show you Government Exhibit 48 for identification and ask you if you can tell us what it is?

A Yes. This is the check which I made out to cash to Mr. Freeman for the equipment, September 30, 1971.

Q Did you yourself supply this check to the Government?

A Yes, I did.

Q From where did you obtain this check?

A From my records.

Q Your own personal records?

A Yes.

MR. FRIED: I would like to offer this in evidence as Government's Exhibit 48.

THE COURT: Any objection?

MR. BELDOCK: No.

THE COURT: Let it be marked.

THE CLERK: Government's Exhibit 48, previously marked for identification is now marked in evidence.

(So marked.)

BY MR. FRIED:

Q Mr. Etra, you testified a moment ago in response to a question by Judge Mishler that you had brought a shipment. I would like you to tell the Court the circumstances -- the sample, excuse me, the sample -- I would like you to tell the circumstances surrounding that sample that you referred to, as best you can. When did this occur?

A Well, it was, I think, within the next week or so.

Q Will you speak up, please?

A Yeah. Within the next week or so. Mr. Freeman called me numerous times, at least one or two phone messages every time I returned home from him, and I prepared the sample and brought it over to him.

THE COURT: Then you said you delievered a bottle?

THE WITNESS: Yeah, it was a small pharmaceutical bottle.

THE COURT: What was in it?

THE WITNESS: Cocaine.

THE COURT: What quantity?

THE WITNESS: Approximately a gram.

Q When you delivered this quantity of cocaine, to where did you deliver it?

A 62 1/2 Perry Street, I believe that was the address.

Q Mr. Freeman's home?

A Yes.

Q Who was present at that time, if anyone?

A I don't recall anyone being there.

Q Can you tell us what if anything was said at that time concerning the sample?

A I gave him the sample. He looked at it, said he would try it and let me know.

Q Did any other conversation occur at this time?

A As I recollect, we discussed the possibility further as to the procurement of more cocaine and it was left at that.

Q Mr. Etra --

THE COURT: I assume the defendant will concede that the endorsement on the check is Stanton Freeman. It is much like the signature on the stipulation, but it is an unusual signature.

MR. BELDOCK: I assumed it was. I really didn't question it. Yes, it is.

DEFENDANT FREEMAN: Yes.

(continued on next page)

Q Mr. Etra, I would like to return and direct your attention to the original conversation that you had with Mr. Freeman, and I would like to ask you if any particular quantity --

MR. BELDOCK: We have had the conversation. Now he is leading him on a very -- Well, a sensative thing, and it is unfair.

THE COURT: I will allow it. If it is evidence of a prior similar crime, I am interested, but if it is any other conversation --

MR. FRIED: It is relating to this conversation, and he said "large quantity."

Q Was there a quantity mentioned?

A When I said "large quantities," I was referring to kilos of cocaine.

THE COURT: Was price mentioned?

THE WITNESS: I am sure there were different prices discussed.

THE COURT: What's your best recollection about what was said about price?

THE WITNESS: I really wouldn't want to say, because the price fluctuated. It also depends on each shipment as to the quality of the merchandise.

THE COURT: Did you discuss that, did you discuss the variation in price depending on the market at the time and the quality?

THE WITNESS: Yes. We went through a whole discussion as to cocaine, as to pure as opposed to cut material, and Mr. Freeman was interested in pure, the best quality possible.

THE COURT: All right.

Q Mr. Etra, a concluding question. You testified that you have just recently pled Guilty to a felony indictment in this District. In exchange for your testimony today in this Court, did the Government make you any promises?

A No.

Q Do you expect anything from the Government in exchange for this testimony?

A No, I do not.

Q Do you expect --

THE COURT: Do you expect the prosecutor to call the cooperation that you gave the Government in this case to Judge Bartels' attention at the time of sentencing?

THE WITNESS: I expect, yes, my cooperation will be noted.

MR. FRIED: I have no further questions.

THE COURT: Now, is there any inconvenience in bringing Mr. Etra back?

MR. FRIED: None, your Honor.

MR. BELDOCK: That would be a good idea, to start tomorrow.

THE COURT: Would you like to cross-examine tomorrow? It will give you a chance to examine all the papers.

MR. BELDOCK: Is there any 3500 Material?

THE COURT: Mr. Etra, you are directed to return tomorrow at 10:00 o'clock for cross-examination by Mr. Beldock and Mr. Wall, if he wishes.

THE WITNESS: Yes, your Honor.

THE COURT: You are excused for the day. Tomorrow morning in this court at 10:00 o'clock.

(Witness excused.)

MR. FRIED: I would like to respond to Mr. Beldock's request. There were no statements taken from the last witness. The only thing I have is a page of scribbled notes of my own.

THE COURT: I might say, Mr. Wall, just so that you can think about it, and write any memorandum that you want, and move to strike the testi-

4

mony if you wish, but when you talk about obscure testimony, and that prior similar crimes might be used to support the Government's case, under those circumstances, well, that is not exactly the language used. Where really the act, the Government's proof does not make it clear on knowledge or intent, the classic example I give, and it is unrelated to this type of crime, is where someone is charged with possession of goods stolen in interstate commerce. He is a retail store. He says, "Oh, I bought this butter . . . " I think of butter because I am thinking of a particular case -- ". . . I bought these 500 pounds of butter, but I didn't know it was stolen."

Then the Government comes in and says, "Well, here's proof. Here are ten hijackers who will tell you that that is all this man sells. We have been dealing in stolen butter for the last ten years." That is the obvious case.

MR. WALL: I have to find the butter in this, though.

THE COURT: Let's relate it to what is here. It is not butter. This is a Conspiracy to Import Narcotics.

Incidentally, at this point I might say I don't see how the three or five grams and the coca leaves have anything to do with this case, really, it has nothing to do with this case at all. I will permit you to argue that. But Mr. Freeman is interested in getting this girl out of the country, Rudner.

My recollection is, and I will have to go over the transcript, that Mr. Davis said that he knew, or somebody said that he knew that Tambini was arrested, he didn't know it was Tambini, but someone was arrested -- I may be wrong, but that is the impression --

MR. FRIED: That is the testimony of, I believe, Mr. Davis.

THE COURT: I thought he said that, but Mr. Wall and Mr. Beldock say no. It may be that someone else had knowledge, I may mix his knowledge up with Mr. Morao. At any rate, we will leave that aside. But from all the testimony, it may be that I assume that he knew. His position is, "I may have been doing something wrong in harboring a fugitive," he says, obstructing justice, whatever it might be, but I did not know anything

about narcotics. I never had anything to do with narcotics."

Well, that is one of the cases, I believe, that prior similar crimes, evidence of prior similar crimes, is admissible.

MR. BELDOCK: You are assuming, your Honor, then, that he says, "I never had anything to do with narcotics."

THE COURT: I can tell that from the case, from the questioning. I can tell when you concede that he was the one that called the Paramount Hotel.

MR. BELDOCK: Yes.

THE COURT: But he asked for the baggage --

MR. BELDOCK: He asked for the baggage --

THE COURT: But what you are saying is, he asked for the baggage, it was absolutely unconnected with the narcotics business.

MR. BELDOCK: I am not saying it is absolutely unconnected with narcotics, unconnected with the narcotics business.

THE COURT: I hope you are saying that.

MR. BELDOCK: The testimony of Mr. Davis

is very clear that Mr. Freeman said there might be three grams or so, and that's all you have.

THE COURT: In that posture, I think that it is admissible. I don't think that I would consider it in any way as convicting him of this crime. In other words, what he did before. On the other hand, I might consider it in determining whether he knew that he was in a narcotics conspiracy, and the activity of trying to hide Miss Rudner was not just trying to get a friend out of the country and out of the arms of the law, but rather in pursuance of the narcotics conspiracy alleged in the indictment.

MR. BELDOCK: If there is proof, your Honor, in this trial any place from anywhere but prior to June 13 Mr. Freeman was involved in the conspiracy to import the five pounds of cocaine, knowing participation, that is one situation. I say to your Honor that from no source will there be any such proof, or any basis to form an inference of that circumstance prior to June 13, or after.

THE COURT: Mr. Beldock, most of the cases say if the proof is clear that he knew, then there is no sense introducing evidence of prior crimes.

MR. BELDOCK: There will be no proof that he knew. The fact is there will be no proof that he knew -- There has been no proof in here yet, and there will be no proof in this case, Judge. We acknowledge what happened --

THE COURT: You are more positive than I am, Mr. Beldock.

MR. BELDOCK: I will also stand corrected by the record, but we have listened carefully, we know this case, we knew it before we came in, and I have not heard anything that would change the statement I just made.

THE COURT: I am hearing it for the first time.

MR. BELDOCK: That's why I say, your Honor, I believe that there has been no proof at all, and there will be no proof at all that Mr. Freeman was involved in, or knew about any importation of this five pounds of coke.

There will be proof of his actions afterwards, most of them having acknowledged --

THE COURT: Mr. Beldock, from the very outset I said the Government does not have to prove that this defendant knew that Tambini was bringing

in five pounds of coke on Pan American Airways on a flight that arrived at 10:00 o'clock.

MR. BELDOCK: I realize that.

THE COURT: The question is whether he was in the business. Whether, as the Government, I believe, contends, he was a distributor under Morao, -- How do you spell that?

AGENT LEVINE: M-o-u-r-a-o, your Honor.

MR. FRIED: M-a-r-o-u --

AGENT LEVINE: M-o-r-a-o, your Honor.

MR. BELDOCK: It serves no purpose at this late hour to argue about it.

THE COURT: I will hear argument on it. You better have a close look at the record, and I suggest you do so, Mr. Fried, because at the end of the trial, I will hear argument.

Is this going to finish?

MR. FRIED: The Government's case should be in by noon.

THE COURT: You believe that, you believe the case will finish?

MR. BELDOCK: We will finish tomorrow. I don't know if it will be in by noon, it depends upon what he puts in with his Agents. I believe

without any doubt it will be finished tomorrow.

THE COURT: We may have to continue tomorrow until it finishes, no matter how late.

MR. BELDOCK: It should finish.

THE COURT: Because I have a motion calendar on Friday, and I have five cases set for trial Monday. So we will finish it tomorrow.

MR. FRIED: Mr. Levine has already testified to the incidents that took place, both at the arrest of Mr. Freeman, as well as the circumstances surrounding the confrontation of Mr. Freeman at the Hotel Diplomat.

Inasmuch as this is a non-jury trial, I think it is unnecessary -- I am going to read the record and see if there are any technical questions I would want to ask, but I think it is unnecessary to repeat that testimony as to those two incidents.

MR. BELDOCK: I told Mr. Fried I might be willing --

THE COURT: I might say to you that until the defendants say that the testimony at the hearing be made part of the trial, it is not part of the trial, and I will decide this case

on the record of the trial from the time you put Mr. Boyd on -- Nothing before.

MR. FRIED: Fine.

THE COURT: All right. 10:00 o'clock tomorrow.

(Whereupon, at 5:15 P.M. the trial was continued to September 13, 1973, at 10:00 A.M.)

I N D E X

Witnesses	Direct	Cross	Redirect
Raphael A. Duarte	351	359	
Francisco Rudge	379	402	
David Duffy	405	444	
John Spencer Davis,Jr.	462	485	528
Marc Etra	538		

Exhibits

Government's		For Id.	In Evid.
25	A Receipt	345	
26	Rap Sheet on Francisco Rudge	347	
27	" " " Marilene Tambini	347	
28	" " " Kim Ornitz	348	
29	" " " Stanton Freeman	348	
30	" " " Hermano Albuquerque	348	
31	4-pg Report	349	
32	Phone Call Transcription	350	
33	Registration Card of Hotel	352	352
34	4 Photos		381
35	Document	385	
36 & 37	2 Suitcases	395	395
38	Statement from Duffy	404	
39	Duff's Grand Jury Min. 7/20/73	404	
40	Document	435	

I N D E X (continued)

Exhibits

Government's (continued)		For Id.	In Ev.
41	Lab Report	460	
42	Grand Jury Min. of Davis	462	
45	Document	477	478
46	Document	477	478
47	9 pgs Counsel Notes	482	
32-A	Tape		490
48	Check to Cash to Freeman	544	544

Defendant's			
D	Hotel Bill		445

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

73 CR 633

STANTON FREEMAN and KIM ORNITZ, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

September 13, 1973
11:00 a.m.

B e f o r e :

HONORABLE JACOB MISHLER, CHIEF U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

ROBERT A. MORSE, ESQ.
United States Attorney
for the Eastern District of New York

BY: BERNARD J. FRIED, ESQ.
Assistant United States Attorney

PATRICK M. WALL, ESQ.
Attorney for Defendant Ornitz

MYRON BELDOCK, ESQ.
Attorney for Defendant Freeman

- - -

THE COURT: Both sides ready.

Where is Mr. Etra?

MR. FRIED: He is here, your Honor.

THE COURT: Would you please take the witness stand, Mr. Etra.

MR. FRIED: Your Honor, I offer this as Government Exhibit for Identification, it is a copy of Mr. Etra's indictment.

THE CLERK: So marked as Government Exhibit 49 for Identification.

(So marked.)

MR. WALL: Your Honor, in connection with this matter, Mr. Beldock and I attempted to reach an attorney this morning who we find is engaged in another court, and I took the liberty of leaving your chambers number so that when he gets a break he can reach me that way. I hope you don't mind.

THE COURT: All right.

MR. WALL: Thank you.

THE COURT: Are you ready, Mr. Beldock?

MR. BELDOCK: Yes, Judge.

Your Honor, at the close yesterday, Mr. Fried mentioned that he had a page of notes

concerning Mr. Etra and an interview of Mr. Etra, and I ask that they be turned over to the defense for examination.

MR. FRIED: Your Honor, I will mark these for identification and make the same objection I made yesterday. These are not verbatim notes.

THE COURT: I wouldn't say that all notes made by the lawyer, but if they are intelligible, if they have quotes that indicate that they are statements made by the witness that the Government interviews, then I would say that the answer is not work product. I feel that, first, a witness is not a client of the lawyer. I feel that 3500 requires that the statement be turned over. When in doubt, turn it over. These are quite unintelligible, but if they can make anything of it, good luck.

THE CLERK: Marked as Government Exhibit 50 for Identification.

(So marked.)

THE COURT: See if they are your statements, and this appears to be -- I doubt very much that this would be producible. But in the other, they really were full sentences, quotes.

MR. FRIED: This is not, this is just my jottings.

THE COURT: I say, if this were a jury trial I doubt that I would direct that that be turned over.

MR. FRIED: I understand.

THE COURT: But I see one set of quotes around there and I don't know what it means,

M A R C E T R A , resumed and testified further as follows:

CROSS-EXAMINATION

BY MR. BELDOCK:

Q How old are you?

A Twenty-four.

Q Have you ever been previously convicted of a crime?

A No, I have not.

Q Aside from the one that you pleaded guilty to?

A No, I have not.

Q When did you plead guilty?

A Some time early this month.

Q How long has that case been pending; when was the indictment?

A I believe approximately a year.

Q I have the indictment before me. You pleaded guilty to a conspiracy count involving how many pounds or kilos?

A A kilo and a half, I believe.

Q But this is an indictment which in a series of counts totaling 14 charges you with various illegal activities, importation, et cetera, involving drugs and different people on different occasions, right?

A Yes.

Q For example, there is a charge of your own importation from Bogota in Count One, your own importation from Bogota of about four ounces; is that right?

A Yes.

Q That was 20 July 1971, correct?

A I would take your word for it, I don't know.

Q Then there is a charge that on August 24, 1971 you and a group of people were involved with importing three pounds; is that right?

A Yes.

Q Of cocaine?

A Yes.

Q That's all you deal in?

A Excuse me?

Q Cocaine is all you deal in?

A Yes. All I had dealt in.

THE COURT: That is the telephone call. Would your client have any objection to continuing the examination while you talk?

MR. WALL: No. This witness does not affect him.

THE COURT: Mr. Ornitz, Mr. Wall is going to leave the room to take care of a call. You have no objection to Mr. Wall leaving and Mr. Beldock protecting any rights you have in the meantime?

DEFENDANT ORNITZ: No.

THE COURT: All right.

(Mr. Wall leaves the courtroom.)

THE WITNESS: I am not presently engaged in any illegal activity.

Q For how many years were you dealing in these quantities?

A I don't think it was a period of years. I think it was a period of, I'd say, six to eight months, approximately.

Q Your first charge here deals with July 20, '71. You mean that's the first time that you ever were involved in importing cocaine?

A Yes.

Q You are positive?

A Yes, positive.

Q That was only four ounces, right?

A Right.

Q That wasn't any big quantity, right?

A Right.

Q Between that date and August 24, '71, had you imported or been involved with others in the importation of any quantity of cocaine?

A I'm not sure if I understand the question.

Q You are --

THE COURT: I sit here and I feel I have a duty to protect the witness against incriminating himself, aside from the matters to which he pleaded guilty. I don't know that I would allow you to question him on activities other than those to which he has pleaded guilty.

MR. BELDOCK: Fair enough, your Honor.

THE COURT: What has happened was there were counts returned against him, a Grand Jury said there was probably cause to believe he committed them. I will allow you to make any inquiry as to what consideration he got for the dismissal of the other counts, but for him to sit

here and confess to other crimes I think is improper without his lawyer being here.

Q Let us just deal with the indictment. On August 24, '71, according to the indictment, you were then engaged in the importation of three pounds of cocaine with these various other people, right?

A Yes.

THE COURT: I would rather you didn't even ask whether he was engaged in activities unless he pleaded guilty to them.

MR. BELDOCK: That is the one he pleaded guilty to.

THE COURT: If he pleaded guilty, fine.

MR. FRIED: Count Thirteen.

THE COURT: If it is a question whether he was charged with it, and not only that, Mr. Beldock, I am not limiting it to the charge, you can ask whether there were other investigations -- there might have been pending charges, there might have been State investigations, but as long as you deal with investigations and don't ask him whether he did it.

I would feel a lot easier about it if you proceeded in that fashion.

Q Were there any other charges pending against you, or any other investigations, aside from what we find in this indictment?

A Not to my knowledge.

THE COURT: Did you agree to testify against the alleged co-conspirators in the count to which you pleaded guilty?

THE WITNESS: No.

Q Have they pleaded guilty?

A Some of them have. Some of them were dismissed for lack of evidence.

Q One of the co-defendants is a man named William Etra?

A Right.

Q He is your brother?

A Yes.

Q Are any charges pending against him?

A No.

Q (Continuing) That involve you in any way?

A No.

Q Was the case dismissed against him?

A Yes, it was.

Q When?

A On the same day that I pled guilty, sometime earlier.

Q In September?

A Yes.

Q When was it that any Government agent first contacted you about Stan Freeman?

A That same day that I entered my plea of guilty, afterwards.

Q How did that come about, was there any advice to you before-hand that you were going to speak to an agent about Stan Freeman?

THE COURT: Show that Mr. Wall returned to the courtroom, please.

(Mr. Wall is now present.)

A My lawyer had told me that one of the U.S. Attorneys. I'm not sure, or an agent, wanted to speak to me. He did not tell me concerning what.

Q They told you that before you pleaded guilty?

A Yes.

Q I wasn't there, but wouldn't it be fair to say that your lawyer said to you in substance that after you plead guilty one of the United States Attorneys wants to talk to you about a matter or a person; is that right?

A He just said a matter, yeah, he did not --

Q Did he say a person or anything like that?

A No.

Q Did he go with you when you were questioned by the attorney?

A No, he did not.

Q You just went in by yourself and you didn't know what it was all about?

A After I pled guilty, my attorney and I went, I guess it was down the hall from Judge Bartels courtroom, and we met Agent Levine and he asked me if I had known Stan Freeman.

Q Did he --

A And I said, yes, I had, and he said, "Well, we will contact you."

Q As simple as that?

A Yes.

Q When was the last time you saw Stan Freeman before yesterday in court?

A Two years ago.

Q And how many times did you see him, twice?

A Or three, possibly four. Not very often.

Q Yesterday you testified to coming to his house for the first time to look at music equipment.

A Right.

Q And coming back with a sample, right?

A Yes.

Q Is that right?

A Yes, sir.

Q And not to any other occasions?

A No. I didn't, but there was possibly another occasion.

Q There might have been?

A Yes, sir.

Q But you don't remember it? You are not testifying to the fact that you remember another occasion?

A No, sir.

Q Did any of the agents show you any photographs?

A Yes, they did.

Q Did they show you a photograph of Stanton Freeman?

A Yes, they did.

Q Did they show you a photograph of any other persons at the same time?

A Yes.

Q Who?

A No one I knew.

Q How many photographs?

A A dozen.

Q How did that come about, what did they say to you? Who was talking to you, Levine?

A I don't remember whether it was Mr. Levine or Mr. Fried, but they said here are some photographs. Do you know any one

of these people?

Q Didn't you know they were asking you at that time about Stan Freeman?

A I assumed from the way the question was put to me that they were asking me if I knew anyone else besides him.

Q Aside from Stan Freeman?

A Yes.

Q Levine told you in the first place he was going to ask you about Stan Freeman?

A Oh, yes.

Q Is that right?

A Yes.

Q And the other photographs he showed you were of other people?

A Yes.

Q He wasn't asking you to pick Stan Freeman's photograph out of a dozen photographs, he showed you his photograph, right?

A Yeah, he gave me a pile of photographs and said, "Do you know any of these people?"

Q And all those other people you didn't know?

A No, I did not.

Q You mentioned the name of a girl yesterday who you say two years ago you met and you remember her name from

two years ago as being in Mr. Freeman's house. You actually remember her name?

A I could tell you why.

Q There may be a reason, but I am not concerned.

A Yes.

Q You do remember her name two years --

A There is --

Q Do you now and did you when you first spoke to Mr. Fried and the agents remember the name of that girl, without anybody suggesting it?

A No one suggested it to me.

Q So you did remember?

A And not at first.

Q How about 62-1/2 Perry Street that you testified to yesterday, did you, when you first spoke to the agents, recall that specific address without more information from somebody else?

A I remembered Perry Street, I remembered that half. I believe I heard 62.

Q Let's go back to the indictment. I think we had established that there was a charge of January 29, '72, for three kilograms of cocaine; is that right?

A (No response.)

(Continued on next page.)

Q Do you want to look at it?

A No.

Q Three kilograms of cocaine, January 29, 1972 involving yourself, Mamie Lynch, Mr. Henlon, Hoffberg, Eunice, a girl named Gabrielle, and a John Doe --

MR. FRIED: Are you reading from Count 13?

MR. BELDOCK: Count 8.

A There were various importations of cocaine. I was involved with one of them.

Q Were you charged with this one?

A Yes, I was charged with all of them.

Q Do you know all of those other people that I just mentioned?

A Yes, I did.

Q And then there is a charge on February 2, 1972, that is in Count 11, about four kilograms of cocaine. Were you charged with that?

A I believe I was.

MR. BELDOCK: We will concede that that is what the indictment shows.

MR. FRIED: I will concede that's the indictment, but I would object to any further questions on this charge.

THE COURT: Yes. I think the inquiry,

as I indicated, should be limited to what he knew he was charged with and what advantages he got by cooperating with the Government.

You realize of course that each of these counts carried a maximum penalty of fifteen years, a fine of $25,000 and a special parole term of not less than three years, didn't you?

THE WITNESS: Yes, your Honor.

THE COURT: And that these terms could be consecutively imposed and the fines could be cumulative, did you understand that?

THE WITNESS: Yes, sir.

THE COURT: So that you were charged in a thirteen-count indictment and if you were convicted of thirteen counts, you were aware that you could be sentenced to a term of thirteen times fifteen years, more than a lifetime; you realized that?

THE WITNESS: Yes.

Q When were you arrested in the case you were charged in?

A October of --

Q '72?

A Right.

Q Were you on bail at the time that you pleaded guilty?

A Yes, I was. I still am.

Q You have been on bail ever since some time shortly after you were arrested?

A Right.

THE COURT: I think Mr. Beldock really wants to know were you ever in custody after you were arrested?

THE WITNESS: Yes.

THE COURT: And you were held at West St.?

THE WITNESS: No. I was held here.

THE COURT: Was bail immediately fixed?

THE WITNESS: Yes.

THE COURT: How much was the bail?

THE WITNESS: $50,000.

THE COURT: And you made bail?

THE WITNESS: Yes.

THE COURT: I see.

Q Is this true or not, that by virtue of your testimony here against Stan Freeman you expect that the sentencing judge in your case will give you a break on sentence and that you will receive a less heavy sentence or a less heavy penalty than you would otherwise have received?

4

Etra-cross

A I have no way of knowing that. You are asking me --

Q I am not asking you whether you know what the judge is going to do. I am asking you what your expectation is in this courtroom.

A Yes, I would hope that due to my cooperation the judge would take it into consideration and lessen the sentence.

Q Haven't you discussed that with your attorney? Withdrawn. I don't want to ask you about your attorney.

Have you discussed that fact with either Mr. Levine or Mr. Fried, simply that in conversation with them a question was discussed about the fact that your cooperation would be brought to the attention of the sentencing judge and that it may be helpful, words to that effect?

A Yes.

Q In getting you a better result on the sentence; isn't that right?

A Yes.

Q When you first spoke to Mr. Fried, when was that? That was shortly after you were sentenced; is that right?

A Excuse me?

Q Withdrawn. We have some notes here that have been produced. Have you spoken to Mr. Fried at any time

when he took notes?

A Yes.

Q And was there more than one occasion when he took notes?

A Yes. I believe there were two occasions.

MR. BELDOCK: I ask through the Court, does the Government have any other notes of interviews with Mr. Etra.

MR. FRIED: That is one page based on my interview and the scribblings on the side are based on my second interview.

THE COURT: That is all the notes that you have?

MR. FRIED: That is all the notes I have, your Honor, that one page.

THE COURT: Concerning the conversation you had with Mr. Etra?

MR. FRIED: That's correct, two different interviews are incorporated onto that one piece of paper.

Q Did you tell Mr. Fried in your first interview that at the time you went to Mr. Freeman's house about the music equipment you may have offered to obtain cocaine for sale to Mr. Freeman?

A If I understand the question, did I offer to obtain cocaine for Mr. Freeman?

Q Yes, words to that effect.

THE COURT: Whether you told that to Mr. Fried.

Q When you first were interviewed by Mr. Fried, didn't you tell him that on that occasion when you went to buy musical equipment, as well as you could remember, you may have offered to Mr. Freeman the possibility that he could purchase cocaine from you?

A Yes.

Q You have been involved enough in the cocaine narcotics world to have had experience with a number of people, I take it, who were talking about buying quantities of cocaine, who never come through?

A Yes.

Q Who never really produce; isn't that right?

A Yes.

Q It is very common for people to talk about quantities, prices?

A Yes.

Q And it is no more than talk.

A Yes.

Q You have also had experience with people who,

in the same process of talking and speculating about buying quantities of cocaine through you, who have been able to obtain a sample?

A Yes.

Q And it is sort of like getting a free blow of cocaine?

A Yes.

Q And then after that nothing came of it, right?

A Right.

Q Well, wasn't that what happened in this case, Stan Freeman never followed up after he got that free sample from you, or that sample, whether you remember it was free or not?

A It was.

Q He never followed up?

A I believe at that point --

Q Did he ever follow up?

A That's what I was going to say. I believe at that point my ex-partner got in touch with Mr. Freeman, and whatever happened from there --

Q With you, any purchases from you?

A No, sir.

Q Who was your ex-partner?

A Howard Warshaw.

THE COURT: Warshaw? How do you spell that?

THE WITNESS: W-a-r-s-h-a-w.

Q You remained at the same address that you had been at? Were you available in the City of New York after the last time you saw Freeman three years ago? You had a phone number, right?

A Yes, I was.

Q You were available at all times?

A Yes.

Q You are the one that had the contact with Freeman, right?

A Yes.

Q You are the one who had the talk with him, you say, about quantities of cocaine?

A Yes.

Q You brought him a sample?

A Yes.

Q It was a free sample?

A Yes.

Q And he and you did not go forward to consummate any transaction about cocaine after that, isn't that correct?

A Correct.

Q This was two years ago, roughly?

A Yes.

Q When you spoke to Mr. Fried about these facts, you had not reviewed this incident with anybody for all that time, right?

A Right.

Q And you knew that the Government agent and Mr. Fried were very, very anxious to get any information they could that would involve Mr. Freeman; they were asking you about him for that purpose; you knew that, right?

A Yes.

Q Am I right in saying that when you spoke to Mr. Fried for the first time you were doubtful about your recollection of some of the events?

A Some of them, yes.

Q It was a long time ago and you thought, well, this may have happened this way, this may have happened that way, but I'm not sure; is that right?

A Yes.

Q Yet they had you back the next day, right, or a day after that?

A Yes, soon after.

Q And they reviewed this whole story and they tried to get more information?

A They asked to go over it.

Q And then there were some changes, like now you were recollecting other things?

A Yes.

Q And they were suggesting other things?

A They were not.

Q They wanted more information than you could remember on the first day, right?

A What happened the second time is that they had asked me to go over it and add anything that I remembered.

Q By this time you knew for sure that if you were to cooperate with the Government and give them incriminatory information regarding Stan Freeman it would serve your best interest in your own case; isn't that right?

A My lawyer said to cooperate fully.

Q In answer to my question, wouldn't it be fair for you to say yes to the question at this point?

A Yes.

(continued next page)

MR. BELDOCK: I think that's all. Thank you, Judge.

Thank you, Mr. --

THE COURT: Mr. Wall, do you have anything?

MR. WALL: No questions.

THE COURT: Mr. Fried, do you have anything?

MR. FRIED: I have two or three questions.

REDIRECT EXAMINATION

BY MR. FRIED:

Q Mr. Etra, when you stated on cross-examination that you were shown photographs, can you tell the Court how you were shown the photographs and exactly what happened?

A Yes, I was sitting opposite I think it was you and --

Q Would you speak up, please, so that --

A Yes, I was sitting opposite you, and I think Mr. Levine was there, and you said, "Have you seen these photographs?"

I said, "No." And you took out a pile of photographs, and four or five sheets with two or three photographs on each, and put them out and said, "Here, look through these. Is there anyone you know?"

Q Was there anyone you knew in those photographs?

A Stanton Freeman.

Q Second, Mr. Etra, you stated that you were able to remember the name of the friend who was at Mr. Freeman's house, and you started to explain how you could remember that name. Would you --

MR. BELDOCK: I object to that.

THE COURT: Overruled. I'll allow it.

Q Please continue your answer.

A Yes, the reason that I had remembered is that Sarah Kennedy is an actress who later on was in a TV series, with a TV series, and was in a few magazines, which made it, you know, something to remember, not just the average every-day person.

Q A third question, Mr. Etra: Before you pled guilty in your own case did you have any knowledge that any agents of the Government or any other person representing the Government was seeking information from you concerning Mr. Stanton Freeman?

A No, I did not.

THE COURT: Had you met Mr. Levine before the day you pleaded guilty?

THE WITNESS: No, I had not. I had met Mr. Levine concerning my case.

THE COURT: Was he the investigating agent in your case, too?

THE WITNESS: No, I believe he was -- when I was arrested I was taken to a building on Seventh Avenue in Manhattan. I believe Mr. Levine was there.

THE COURT: Did he talk to you at that time?

THE WITNESS: No.

Q My last question, Mr. Etra: Were you ever doubtful in your recollection of what Mr. Freeman stated to you as you testified yesterday that either the first time that you were interviewed or on the second time that you were interviewed?

A No.

MR. FRIED: No.

THE COURT: Anything further?

MR. BELDOCK: No.

THE COURT: Mr. Wall, anything further?

MR. WALL: Nothing further.

THE COURT: You may step down. Thank you.

(Witness excused.)

THE COURT: Next witness, Mr. Fried.

MR. FRIED: Your Honor, Mr. Silvestro is my next witness. I'll call him now.

THE COURT: Mr. Wall, you did receive a telephone call from, I assume, Mr. Etra's lawyer?

MR. WALL: No.

THE COURT: Oh, another lawyer?

MR. WALL: Another lawyer, yes. I received it.

THE COURT: It referred to something in this case?

MR. WALL: Yes. That's why I took the liberty of having the call put into your chambers.

MR. BELDOCK: Your Honor, can we take --

THE COURT: I beg your pardon?

MR. BELDOCK: Could we ask you a question about procedure? We are prepared for any eventuality, and therefore we are trying to get witnesses prepared, and I think your Honor said yesterday that you wanted to complete the case today, the entire case, not just the Government's case.

THE COURT: That's right.

MR. BELDOCK: And if that is still your Honor's desire, I just want to be sure of that,

because we will then try to get witnesses in for late hours.

THE COURT: It's a must.

MR. BELDOCK: I understand your problem, Judge. I spoke to your clerks.

THE COURT: I have a heavy calendar tomorrow. As I say, I have five trials scheduled for Monday. All five won't go on, but I'm certain to pick a jury in one. So I'd rather that this does not go over until Monday. If it has to it will, and I will just have to pick a jury in the morning, and then have this case continue sometime in the afternoon, and we'll try to finish it.

MR. BELDOCK: Well, that's all you can do for us now. We'll have to put the witnesses on call for this afternoon and see what happens.

THE COURT: Oh, I think you should bring them in immediately.

MR. BELDOCK: Except that they are busy people.

MR. FRIED: Mr. Silvestro, Mr. Levine, their direct testimony shouldn't be more than 20 minutes to a half hour, your Honor, at the

most.

THE COURT: Well, ask them to get here not later than one o'clock. If necessary, I will suspend for lunch, and let's go on at one o'clock. I don't want to keep the reporters too late.

MR. BELDOCK: I realize that, Judge. If we go on with our case I don't want to take any more time. Our witnesses will come in by some order.

THE COURT: Fine. If we can't complete by 5, 5:30, we'll go over to Monday.

MR. FRIED: The Government calls as its next witness Mr. Jay Silvestro.

J A Y S I L V E S T R O , having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FRIED:

Q Mr. Silvestro, would you please state your occupation.

A I'm a Special Agent with the United States Drug Enforcement Administration.

Q And Mr. Silvestro, how long have you been so

employed?

A Since its inception on July the 1st, 1973.

Q And prior to that date were you also employed by the United States Government?

A Yes, sir, I was a Special Agent with the United States Customs Service.

Q For how long had you been so employed?

A For approximately two years.

Q Mr. Silvestro, directing your attention to this case, during the course of your official investigation, your official duties, rather, did there come a time on June 18, 1973 when you were -- let me withdraw and rephrase that.

Were you engaged in the course of your official duties on June 18, 1973?

A Yes, sir, I was.

Q As a result of your official duties can you identify any of the persons sitting at that table?

A Yes, sir, I can identify Mr. Stanton Freeman and Mr. Kim Ornitz.

Q Would you point them out, please.

A Mr. Freeman is the gentleman to my right, and Mr. Ornitz is the gentleman with the green tie at the far left.

THE COURT: Let the record show the

witness pointed out the defendants Stanton Freeman and Kim Ornitz.

Q Did there come a time on June 18, 1973 when you had occasion to arrest one John Spencer Davis?

A I participated in the arrest of John Spencer Davis, yes, sir.

Q You were one of the arresting officers?

A That's correct.

Q Can you tell us as best you recall the circumstances leading up to the arrest of Mr. Davis?

A Yes, sir, I in the A.M. hours was in the Customs Office Building at 201 Varick Street assembling attorney letters and travel documents in a case in which Mr. Levine was involved. At this point that's all I knew concerning this investigation.

Shortly after one o'clock Special Agent Joseph King came into the office and said that --

MR. BELDOCK: Object to what he said.

THE COURT: Sustained.

Q As a result of -- Did you have occasion to leave Customs headquarters in Varick Street and proceed uptown towards the Times Square area?

A That's correct. I was directed to the Paramount Hotel in the company of Agent Joseph King, Customs Agent.

Q Did a time come when you arrived at the Paramount Hotel?

A Yes, that's correct.

Q Can you tell us what time this was?

A It was sometime before 2 o'clock in the afternoon.

Q Can you tell us when you arrived what you observed?

A Mr. King went into the lobby of the hotel, and I remained in the automobile. A short time later Mr. King came out, and I went in to the lobby of the hotel, where I met Special Agent Levine, who explained to me --

MR. BELDOCK: I object.

A (Continuing) -- why we were there.

THE COURT: Strike it out, "explained to me." You can't give us conversations.

Q As a result of your investigation were you at the scene in the Paramount Hotel when a person subject to this investigation appeared?

A That's correct.

Q Could you describe what you saw, if anything?

A I was positioned in the front of the Paramount Hotel, and I was with Mr. Levine. Mr. Levine walked into the lobby of the hotel, and as he was returning from the lobby I saw coming down the street a gentleman who to me looked --

looked to me as though he were the gentleman for whom we were waiting. I told -- I went up to Mr. Levine and I said, "The fellow is here, I just saw someone that has to be him, and he's going into the hotel."

This gentleman entered the hotel, and a short time later the manager of the hotel came out and said that --

MR. BELDOCK: I object.

Q Would you tell us, please, again what it was that you saw from your vantage point outside the hotel?

A I saw a young man in his -- in his 20's.

Q Did you subsequently learn the identity of this individual?

A Yes, I learned him to be Jock Davis.

Q Is that the man also known as John Spencer Davis?

A That's correct.

Q Continue, please.

A This -- this fellow a short time later came out of the hotel carrying some suitcases.

Q Mr. Silvestro, I ask you to look at Exhibits 36 and 37 and ask you if you recognize these.

A Yes, sir, I believe those are the bags which he -- which he had.

Q Would you continue telling us now what it was

that you saw?

A While we were waiting for the person who went into the hotel, Mr. -- who I later learned to be Mr. Davis, to come out, I went up the street to advise Special Agent King in the car that we were anticipating some movement at -- at this time.

When I went up to Mr. King's car I noticed another couple standing on the street leaning against the building, and this gentlemanwas also in his 20's.

Q Do you recognize that man in this courtroom?

A Yes, it's Mister -- the person I later learned to be Mr. Kim Ornitz.

Q Continue, please.

A I then returned to the front of the hotel and was instructed by Agent Levine that if the person who was picking up the bags went on foot that I would follow him, and that they would go in cars.

Mr. Davis emerged from the hotel. He walked perhaps a third of a block in -- in an easterly direction. At this time I preceded him. He then crossed the street, heading towards the Broadway Times Square area.

I went to the corner and crossed. While I was doing so Mr. Davis put down the bags and looked around, looked up the street towards the -- the intersection with Broadway,

and he then continued up the block.

I crossed the street. Mr. Davis again put down the bags and looked around, and crossed through Times Square. And from my vantage point across the street I then saw the Customs vehicles pull up across the street in front of Mr. Davis. And I then crossed the street and participated in his arrest.

Q You stated earlier that you saw Mr. Ornitz as you were observing the hotel before Mr. Davis went in. Would you tell us where Mr. Ornitz was in relation to Mr. Davis?

A At the time I saw Mr. Ornitz Mr. Davis was inside the hotel lobby and Mr. Ornitz was perhaps 75 yards east of the hotel on the same side of the street.

Q Did there come a time when you -- if at all -- when you again saw Mr. Ornitz that day?

A When I was on the opposite side of Times Square and the cars were pulling up -- to arrest Mr. Davis, I caught a glimpse of someone whom I believe was Mr. Ornitz going around the corner, leaving Broadway.

Q Mr. Silvestro, I'd like to direct your attention to the events, if any, that occurred subsequent to the arrest of Mr. Davis at the Hotel Diplomat.

Did there come a time when you entered the Hotel

Diplomat after Mr. Davis' arrest?

A Yes, that's correct.

Q And would you --

A After Mr. Davis was arrested I was directed to go to the Hotel Diplomat and wait for the arrival of Mr. Davis with the baggage, for an attempted delivery of the bags. I did proceed to the lobby of the Diplomat -- of the Diplomat Hotel, and after I was there for some time Mr. Davis did in fact arrive with the bags.

He came into the lobby and was preceded by some other Customs agents. He came into the lobby and went through a -- a doorway at the back of the lobby proper, knocked on the door, waited a moment. Then he turned the doorknob, and someone was behind the door. He stuck his head in and said something for a few moments.

He then went over and put the bags down by the -- the desk clerk's office, and sat in a chair and stayed there for some time.

And other -- other Customs agents that arrived. And we -- we ascertained that no one was going to -- was going to accept the bags from Mr. Davis.

(Continued on next page.)

FL:jk
2AM R2

Q Did there then come a time, Mr. Silvestro, when you had opportunity that afternoon to meet the defendant, Mr. Freeman?

A Yes. We found Mr. Freeman at the nightclub Les Jardins, in the lower floor, the basement of the Diplomat Hotel.

At this time Mr. Levine identified himself to Mr. Freeman and asked if he could speak to him. Mr. Freeman said that, you know, he'd be glad to talk to Mr. Levine if he could just wait a moment.

He went on and conducted business in the restaurant for a short time. He was showing, I believe, a florist around.

We all then went upstairs to the office of -- of Mr. Freeman, and Mr. Levine again identified himself and showed Mr. Freeman his credentials, and advised him of his constitutional rights, and said that he was a suspect in a -- in a cocaine smuggling case.

He asked him if he had ever seen --

Q When you stated he advised him of his constitutional rights, for the purposes of the record would you tell us what it was that he advised him?

A He produced from a -- a wallet or a notebook he had in his pocket a standard customs laminated-type constitutional

rights card and advised him that he had the right to remain silent and the right to consult an attorney.

MR. BELDOCK: Your Honor, may I object. I should have objected on the last question, and I object to what Mr. Levine said through this witness' mouth. But I ask that you strike the statements about advising of constitutional rights, et cetera.

THE COURT: All right, that calls for a conclusion, but I'll certainly allow the witness to testify as to what Mr. Levine did tell Mr. Freeman.

MR. BELDOCK: It's in Mr. Freeman's presence.

THE COURT: I beg your pardon? What?

MR. BELDOCK: All right.

Q Would you continue, please?

A Mr. Levine did read a statement of rights from a -- a card that he had in his pocket.

THE COURT: Do you have a copy of that card?

THE WITNESS: Not in my custody, no, sir.

THE COURT: Is it the card that's issued to --

THE WITNESS: It's a standard form, sir.

THE COURT: (Continuing) -- Special Agents?

THE WITNESS: Yes, sir.

Q I show you a document which -- Would you mark this a Government exhibit for identification?

THE CLERK: So marked Government's Exhibit 51 for identification.

MR. FRIED: Mr. Beldock?

MR. BELDOCK: Yes, all right.

Q Mr. Silvestro, I show you Government Exhibit 51 for identification and ask you if you can identify that.

A This is a -- a statement of rights card, Form 5661, which is the -- the type of card which Mr. Levine produced in my presence from his pocket, and seems to -- to be the wording and terminology that he read to Mr. Freeman.

Q Would you read that into the record, please?

A The card says "Statement of rights.

"Before we ask you any questions it is my duty to advise you of your rights. You have the right to remain silent. Anything you say can be used against you in a court or any proceedings. You have the right to consult an attorney before making any statement or answering any question, and you may have him present with you during

questioning. You may have an attorney appointed by the U.S. Commissioner or the court to represent you if you cannot afford or otherwise obtain one. If you decide to answer questions now, with or without a lawyer, you still have the right to stop the questioning at any time or to stop the questioning for the purpose of consulting a lawyer. However, you may waive the right of advice of counsel and your right to remain silent and you may answer questions or make a statement without consulting a lawyer if you so desire."

Q Mr. Silvestro, will you now tell us as best you recall what, if anything, Mr. Freeman responded to that and what, if anything, was said?

A Mr. Freeman said that he didn't understand what this was all about and that he was completely at a loss to understand why we were there.

Mr. Levine asked Mr. Freeman if he had ever seen Mr. Davis, and he said that he hadn't. And then he said "Well, a few moments ago he poked his head in the door and he asked for someone," and he said a first name, which I believe was perhaps Jim. And Mr. Freeman said that he didn't know who Jim was or where he was, and asked him to leave.

Mr. Levine asked Mr. Freeman if he know Rosalys Rudner, and Mr. Freeman said that he did not. Mr. Levine

asked him if he knew any Brazilians, and Mr. Freeman said no, that he didn't know any Brazilians at all.

And Mr. Levine asked him if he knew anyone who lived in the Albert Hotel, and Mr. Freeman says that he did not, that he knew no one there.

Mr. Levine explained that we were conducting a -- a smuggling investigation, and Mr. Freeman said that he would assist us in any way that he could. However, he didn't know the person named and didn't know any Brazilians or anyone at the Albert Hotel, and didn't know the gentleman who was introduced to him as Mr. Davis, and so that he just -- just couldn't help.

Mr. Levine said that, you know, we had reason to believe that he had sent Mr. Davis to pick up the bags of the fugitive Rosalys Rudner at the Paramount Hotel, and Mr. Freeman said that he had no knowledge of this whatsoever and that he had stated that he had never seen the bags or -- or the gentleman.

Mr. Levine then asked him if he had ever heard of Kim Ornitz, and Mr. Freeman said yes, that he knew a Kim Ornitz but he hadn't seen him that day at all, hadn't seen him in a while.

He then said that he saw him for just a very short moment that afternoon, that Ornitz had walked into the

coffee shop where he was eating a light snack to -- to see how things were going at his club, but that all he said, the sum total of their conversation was something like "Hi, how's it going?"

Q Did there come a time, Mr. Silvestro, when you and your fellow agents left the hotel Diplomat and returned downtown to your headquarters with the man you had just arrested, John Spencer Davis?

A Other agents took Mr. Davis to Customs headquarters. Mr. Levine and myself remained for a short time at the Diplomat Hotel and -- and spoke further to Mr. Freeman. Mr. Freeman and a man who was his protege or business partner. And Mr. Levine and myself went to the coffee shop, and over coffee Mr. Levine explained to Mr. Freeman that if he had any knowledge of the whereabouts of the fugitive Rosalys Rudner that now is the time to tell us, that we wanted the girl, we didn't want to make trouble for anyone else, and that if he could help us in any way or was in any way peripherally involved in that he may have knowledge of the whereabouts of the girl, that if he told us we would go on about our business, and that we were primarily interested in locating this girl, and not in -- in getting involved with anyone else.

Q Following that conversation did you then leave

with Mr. Levine?

A That is correct.

Q Mr. Silvestro, on the following evening, June 19th, were you present when Mr. Levine and other agents of the United States Bureau of Customs arrested the defendant Stan Freeman?

A I was in the area of the arrest. However, I did not actually see the arrest.

Q Were you present that evening at Varick St., 201 Varick St., when Mr. Freeman was being questioned by Mr. Levine?

A Yes, sir, I was.

MR. FRIED: Excuse me, your Honor.

May I make a suggestion in the interest of economy: I am going to -- Mr. Levine will testify, and rather than cumulate this evidence, if you have no objection I would skip right over the events with Mr. Sylvestro at the --

THE COURT: Do you intend to examine Mr. Levine?

MR. FRIED: I intend to examine Mr. Levine.

THE COURT: Then please continue.

MR. FRIED: Fine.

THE COURT: I think --

Q Mr. Silvestro --

THE COURT: (Continuing) -- the amount of time wasted is at a minimum, and I think the witness ought to testify to these events.

(continued next page)

GR:jk
3AM R1

MR. WALL: May I suggest, in light of your Honor's apparent interest in getting the version of both Mr. Silvestro and Mr. Levine, that at this point, although we have not raised this issue before, that Mr. Levine ought to leave the courtroom.

THE COURT: Do you have any objection?

MR. FRIED: I have no objection.

THE COURT: Mr. Levine, will you please take a position outside the courtroom until the examination of Mr. Silvestro has been completed?

MR. LEVINE: Certainly.

(Mr. Levine leaves courtroom.)

BY MR. FRIED:

Q Mr. Silvestro, would you please tell us, as best as you recall it, and in full detail as you can recall, the circumstances surrounding the questioning by Mr. Levine of the defendant Mr. Freeman, from the very first that you entered the room or the area until it was completed?

A We found -- when I entered the building, I found Mr. Freeman and Mr. Levine in the Customs fingerprint and mug identification room. We had to get the room open, to get a key from the personnel, who are on duty there twenty-four hours a day, and Mr. Freeman was taken into the room and

was photographed and fingerprinted and his -- during this time Mr. Levine reviewed the articles which were taken from the person of Mr. Freeman at the time of his arrest.

He reiterated much of what he'd asked Mr. Freeman at the Diplomat Hotel the previous day. He asked him about Rosalys Rudner and her whereabouts and if he knew her and about Mr. Ornitz and Mr. Davis and about his having sent Mr. Davis to pick up the bags of Rosalys Rudner.

THE COURT: Did he say he didn't know Mr. Davis? Did he again say he did not call the hotel?

THE WITNESS: Yes, sir, that's correct.

THE COURT: Tell us. Repeat what you say he said.

THE WITNESS: Yes. He denied having any knowledge of the bags or of Mr. Davis and then he said that -- he said "Mike, if I can speak to my lawyer, I'm sure I can explain this whole thing."

And at this time Mr. Levine said, "Well, do you want to call your lawyer now" and he said, "Well, I do."

He was taken into another room and a call was placed and a short time later, a little while later, Mr. William London appeared.

Q Do you recognize that attorney in this courtroom today?

A Yes, sir, I do.

Q Would you identify him, if you can?

A Mr. London is sitting, the white shirt and brown tie.

THE COURT: The witness has identified Mr. London.

Q Continue, please.

A Mr. London arrived and had a discussion with -- with Mr. Freeman and Mr. London came out and asked exactly what the situation was, and Mr. Levine said that Mr. Freeman had been arrested, in a conspiracy to smuggle cocaine in that he had directed a Mr. Jock Davis to go to the Paramount Hotel and pick up the bags of the fugitive.

Mr. Freeman was present during this time and Mr. Levine said what we primarily want is to locate the fugitive and, you know, we have asked Mr. Freeman's help in this matter.

And Mr. London asked, you know, what the situation was with his client, and the fact that he had been arrested and why had he been arrested, and he asked if there was some way to get Mr. Freeman released, and Mr. Levine said that he'd you know -- he didn't think that there was any way he could get Mr. Freeman released that night and he said but, at any

rate, that this would not be his decision.

And Mr. London, you know, asked whose decision it would be, and he said -- Mr. Levine said well, it would -- it would be in part up to the United States Attorney, and at this time it was requested that the United States Attorney handling the case, you, Mr. Fried, be called.

Mr. Fried was called and did arrive at 201 Varick St., again some time later, and Mr. London and Mr. Fried had a conversation -- had conversations out of my presence and Mr. -- Mr. Freeman in the interim stayed back with us, and during this time he made the statement to Mr. Levine, in my presence, that he'd gotten into this mess because he was doing a friend a favor and that he could explain the whole thing.

Mr. London came out and did -- the meeting there was terminated.

Mr. Freeman was taken to The Federal House of Detention onWest St.

Q You stated earlier, Mr. Silvestro, that certain documents had been shown to Mr. Freeman. I'd like to show you certain exhibits, Government Exhibit 1 in evidence, which was marked in evidence at the hearing, your Honor, and not at the trial.

THE CLERK: It was marked at the trial.

MR. FRIED: I'm sorry. I stand corrected. It was marked.

BY MR. FRIED:

Q Was that shown to Mr. Freeman?

A These are four pictures of the fugitive Rosalys Rudner and these were shown to Mr. Freeman at the hotel originally, and he was asked if he had seen this girl before. He said "No."

Q I now show you a series of documents, Government Exhibit 4A, 4B, 4C, 4D and 4, which documents were marked at the hearing and not at the trial.

At this time I would offer them into evidence.

First, Mr. Silvestro, can you identify these documents?

A 4 is an envelope that I believe was in the leather folder that Mr. Freeman was carrying at the time of his arrest.

The other four exhibits, 4A, 4B, 4C and 4D are pages from Mr. Freeman's address book.

THE COURT: All right. Is there any objection to marking those?

MR. BELDOCK: Aren't they in evidence already?

MR. FRIED: They're put in evidence at the

hearing.

MR. BELDOCK: No objection.

THE COURT: Except for the objections previously made at the suppression hearing, which objections are preserved.

MR. FRIED: The same then with Government's Exhibit 3.

MR. WALL: None, your Honor.

THE COURT: Let them be marked.

MR. FRIED: Government 3 in evidence and --

THE CLERK: Government's Exhibits 3, 4 through 4D inclusive are received in evidence.

(So marked.)

BY MR. FRIED:

Q Mr. Silvestro, I also show you Government Exhibit 2, and offer that into evidence, and ask you if you can tell us what that is?

A Exhibit 2 is a binder page containing pictures of other persons arrested.

Q Were those photographs shown to Mr. Freeman that evening?

A These were shown that evening, yes.

MR. FRIED: Again I offer --

A (Continuing) -- the first document you showed me were

pictures that were shown to him at the hotel. These were shown that evening.

MR. FRIED: Mr. Beldock, I offer all of these documents now in evidence.

THE COURT: Mr. Beldock has indicated that there is --

MR. FRIED: Except for the last one, your Honor. He didn't respond to it.

MR. BELDOCK: There is no objection.

Mr. fried; To the photographs. That was Exhibit 2.

THE COURT: Oh. No objection?

MR. WALL: No objection.

MR. BELDOCK: No.

THE COURT: Let them be marked.

THE CLERK: Government's Exhibit 2 previously marked for identification now marked in evidence.

(So marked.)

A (Continuing) This -- this folder is bearing the name Theresa Terezinha De Jesus Silva Brandao Costa.

Q Would you indicate what it is you are referring to?

A It is Government Exhibit 3. It is a -- some sort of

travel circular from Atlanta, Georgia.

Mr. Levine, when he found this, asked Mr. Freeman who this person was and Mr. Freeman stated that it was someone that he had called a lawyer for, for an immigration hearing, and not someone that he knew.

Q Thank you.

A One of the versions that -- of the story that Mr. Freeman told on that evening was he said that someone whom he knew casually had asked him to send someone to pick up these bags and asked who this person was. Mr. Freeman replied that he knew him only in passing and that he thought his name was George Simon and that Mr. Simon was going to come back and pick up the bags at the hotel later on.

Q Do you recall any other conversation that occurred during that evening when Mr. Levine was speaking to the defendant Mr. Freeman?

A Not specifically, sir.

Q Did there come a time, Mr. Silvestro, when you had occasion to speak with the defendant Stanton Freeman again, in August of 1973?

A Yes, sir. In -- on I believe August 16th, I was called to your office, to Mr. Fried's office, to meet with Mr. Freeman and his attorney, Mr. Beldock, and one of Mr. Beldock's colleagues.

MR. BELDOCK: Can we identify her as Miss Wresien?

THE WITNESS: Thank you.

Q Was this an extremely -- would you give us an idea, before going into it, the length that this meeting took? Do you recall?

A It was at least two, possibly three hours.

Q During the course of that -- that interview, Mr. Silvestro, or that meeting, did you yourself make any notes?

A No, sir, I did not.

THE COURT: The stipulation as to the use of the statements made is in the record, is it not?

MR. FRIED: That's correct.

THE COURT: Was it a written stipulation?

MR. FRIED: No. It was an oral stipulation entered into.

THE COURT: All right.

MR. FRIED: Between counsel, your Honor.

MR. BELDOCK: I should, before Mr. Fried goes into this discussion, make one preliminary objection, which I think I alluded to when we first discussed it. That is, that in my opinion all that was said in that office and all that

will be elicited will be essentially and completely in content exculpatory.

It will, nonetheless, involve many details concerning, or numerous details, whatever they are, concerning relationships between Mr. Freeman and this gentleman George and Theresa in the few days that are at hand.

It is a story that took about three or four hours, to my recollection, and I just state to your Honor that if it is, as I believe it to be, an exculpatory statement, in its entirety, in fairness, that it's not admissible as an incriminatory admission.

THE COURT: Unless the Government proves that the exculpatory statement is false. Then I may use it. That is the only value.

MR. BELDOCK: I -- that's fair enough.

THE COURT: It is your appraisal that it's exculpatory.

MR. BELDOCK: That's fair enough.

THE COURT: I will hear it. If it's exculpatory, the Government hasn't proved it's false, then of course I would just disregard it.

All right.

MR. FRIED: Your Honor, before we go into the statement, I'd like to bring to Mr. Beldock's attention as well that there was one admission made during that statement which again relates to prior similar activities.

THE COURT: I will take it for the reason indicated.

MR. BELDOCK: Of course, we haven't argued that completely but as long as your Honor reserves your final decision, certainly --

THE COURT: I certainly will.

MR. BELDOCK: Both as a judge of the law and a judge of the facts --

THE COURT: I will hear the argument. If it is not in, it is not in.

But at this point I say it is admissible in evidence. It is a tentative finding.

I frankly see no reason that it should not come in under the circumstances of this case.

BY MR. FRIED:

Q Mr. Silvestro, I think --

MR. WALL: I'm sorry, Mr. Fried.

Mr. Ornitz would like to be excused very briefly, and I think that since this relates at

12

least temporarily solely to Mr. Freeman, and since, as I understand your Honor's ruling, it is admissible only against Mr. Freeman, I think --

THE COURT: That is correct.

MR. WALL: -- he could be excused for a couple of minutes while the hearing continues.

THE COURT: If he has no objection, it's a voluntary absence. He has no objection of continuing the trial against him ; is that correct?

THE DEFENDANT ORNITZ: No objections, your Honor.

THE COURT: All right.

MR. WALL: Thank you.

(Defendant Ornitz leaves courtroom.)

(continued next page)

BY MR. FRIED:

Q Mr. Silvestro, would you please relate, as you recall, the -- what you heard in my office, what was said by Mr. Stanton Freeman, the defendant in this case, concerning the crime charged in this case?

THE COURT: Now, I understand that there is no mechanical or electronic recording of any kind?

MR. FRIED: That's correct.

THE COURT: And the sole record --

MR. FRIED: I have notes, your Honor.

THE COURT: I cannot take your notes.

-- is Mr. Silvestro's version at this time?

MR. FRIED: That's correct, your Honor.

THE COURT: All right. Go ahead.

A When I arrived, Mr. Fried was in his office and Mr. Freeman with his attorneys. The first thing that happened was that Mr. Fried introduced me to Mr. Beldock and Miss Wrezien and Mr. Fried stated that although he had stated it previously to the attorneys, he would like to say to me that Mr. Freeman was here of his own accord and that Mr. Freeman understood that anything that he said in our presence could be used for or against him in the

investigation which was continuing.

Mr. Fried said that I might begin the questioning, being that I was closely associated with the events as we had constructed them over the week, including the 13th of June.

I asked -- the first thing I did was to ask Mr. Freeman to, in his own way, to the best of his recollection, tell us what happened and how he became involved with George Morao and Terezinha Costa during that week, the week of the 13th.

And Mr. Freeman stated that some time on the night of the 14th, or the morning of the 15th, he wasn't exactly sure which, Mr. Morao and Miss Costa and their child arrived at his house and asked if he could put them up. He said that he had previously, as a gesture of friendship, invited them to come and stay because he understood that they were painting or doing something to the place where they were living, a loft, or they were going to live, and they were going to have to stay in a hotel.

They came and spent the night or stayed a while. It was Friday.

Friday evening, when Mr. Freeman went to work, he called or he stated that he called his home to see if George Morao or Theresa Costa needed anything or how they were

doing at his home. At this time Mr. Freeman stated that George Morac said that they were doing just fine. However, he had an additional favor to ask of Mr. Freeman, that favor being that another friend of theirs, a young lady, had come and needed a place to stay and asked if Mr. Freeman could put her up for a short time. Mr. Freeman acquiesced to this and said it was fine with him.

When he went home that evening from the club, perhaps Saturday morning, in the hours, Mr. Freeman stated that he worked because he was in the nightclub business late hours.

(Defendant Ornitz now present.)

A (Continuing) That his ex-wife's boyfriend was in front of his apartment pacing up and down in quite an agitated state and he said -- the boyfriend said that he had a fight with Mrs. Freeman and she was in Mr. Freeman's apartment. Mr. Freeman said that he went into the apartment and there were --

THE COURT: Wait now. She was in his, Mr. Freeman's apartment, or the boyfriend's apartment?

THE WITNESS: Mrs. Freeman was in Mr. Freeman's apartment.

THE COURT: Oh.

THE WITNESS: Mr. Freeman went in to his

own apartment and there were people sleeping on the floor, some with a blanket over their head, and people he believed to be George and Terezinha Costa and the girl visitor.

MR. Freeman settled the argument between his wife and her boyfriend and went to bed.

He said that the next day, on Saturday, which would be the 16th of June, that Mrs. Freeman and her mother and their -- one of their daughters came to visit Mr. Freeman and that while they were there, his mother-in-law invited them to come to her house and -- out of New York City, in Upstate New York, the following day.

I believe there was some mention made that the Costa's might be interested in renting some property up there or a building up there.

At this time apparently the girl Rosalys Rudner was complaining, was unpleasant and Mr. Freeman said that his mother-in-law asked that the girl not come with them because she didn't particularly care for her, for her attitude or something.

Also, on Saturday, he said that a friend

of George's named -- whom he knew only by the name of David, came to visit George and they had some discussion about getting to Canada or visiting Canada and driving to Canada and that they borrowed some maps from Stanton Freeman, to examine routes to Canada.

Also, again on Saturday, Mr. Freeman, as a favor to George Morao, went to their loft on his motorcycle and retrieved some camera equipment that they wanted, and it was during -- after he returned Mr. Morao explained to Mr. Freeman that the girl's boyfriend had been in trouble with the law, had been arrested at the airport earlier in the week, on a drug charge, and that's why the girl was so upset and was so unpleasant and that her -- she wanted her luggage which was elsewhere.

Also, again in the same period of time, during Saturday, Mr. Freeman, as a favor to Mr. Morao, went to the Albert Hotel and paid some money on the hotel bill of George Morao and Terezinha Costa and retrieved some of their luggage, some of the Morao and Costa luggage from the Hotel Albert.

Later in the evening, Saturday, June the 16th, when Mr. Freeman was about to go to work, he got a taxicab and took Mr. Morao and Miss Rudner to the corner of Second Avenue and Fourth Street, and dropped them off there, the understanding being that Miss Rudner would no longer be back at Mr. Freeman's residence and, according to Mr. Freeman, that's the last time that he saw Miss Rudner, was on Saturday evening.

On Sunday Mr. Freeman stated that he and Mr. Morao and Miss Costa did in fact go to his mother-in-law's place upstate.

On Monday, in the morning hours, or -- in the late morning hours, the fellow known as David again came to Mr. Freeman's residence and picked up Terezinha Costa because Mr. Freeman was told she needed to go to an Immigration hearing, some sort of action to forestall her deportation from the country, on some sort of visa technicality.

THE COURT: Would this be on Monday? You said Sunday he was up at his mother-in-law's place?

THE WITNESS: Yes, sir. Sunday he went to

his mother-in-law's and they returned.

THE COURT: This was Monday?

THE WITNESS: Yes, sir, on Monday.

THE COURT: The 18th?

THE WITNESS: Monday, the 18th, this fellow who he knew as David came to take Terezinha Costa to some sort of Immigration action.

A (Continuing) While she was away, George Morao was present and, according to Mr. Freeman, Miss Rudner was gone since Saturday. He said that George Morao was agitated because he was worried about, he thought, the action against Terezinha and the fact that it was taking apparently a while. He anticipated a return quickly and she did not.

During this time, he had conversations with Mr. Morao in which Mr. Morao said that the girl, Rosalys Rudner, was giving him a very hard time because he wanted -- she wanted her luggage, which was in the Paramount Hotel, and he asked that Mr. Freeman call the Paramount Hotel and inquire if they did in fact still have her luggage and what would be necessary for her to retrieve her luggage.

Mr. Freeman said that the reason that Mr. Morao asked him to call was that although Mr. Morao spoke presentable English, he did not speak good idiomatic English and he said he would feel more comfortable if -- told Mr. Freeman

that he would feel more comfortable if Mr. Freeman called the hotel for him.

Mr. Freeman said that he did call the Hotel Paramount and learned that they did in fact have Miss Rudner's luggage there but there was a hotel bill to be satisfied before the luggage could be picked up and he related this to Mr. Morao and said if you want the luggage, all you have to do is go and pick it up.

Mr. Freeman said that Mr. Morao then confided in him that he believed that the luggage contained some few grams of cocaine and that they may have been watched and that he -- he had no intention of going there and picking the bags up himself.

Mr. Freeman said, "Well, why don't you get someone to do it for you,"

And Mr. Morao said, "Well, I don't know anyone."

And then as he was leaving for work, sort of as an afterthought, Mr. Freeman said, "Well, if you want, you know, if you don't want to go pick up the bags, I'll get someone at the club, some fag or one of the kids around the club, to go and pick up the baggage," and left for work.

Mr. Freeman stated when he got to the Hotel Diplomat for work, he discussed or asked some of the people around, a gentleman I believe named Brad Strange and his girlfriend,

asked them if they would not go over and pick up this luggage for him at the Hotel Paramount, and did not elicit from them any specific response. They were noncommittal about going to pick up the bags, for some variety of reasons, which I don't quite honestly specifically recall right now.

He said that he then sometime later was -- during the course of business stopped in the coffee shop of the Diplomat Hotel and was having some light meal, when someone he knew to be Kim Ornitz came -- came by to visit him and brought with him a young friend.

When he saw Mr. Ornitz and the friend, he again remembered the bags, which were at the Paramount Hotel, and he stated to Mr. Ornitz that he wanted -- indicated he wanted to speak to Mr. Ornitz alone for just a moment and asked the other gentleman to wait out in the lobby for a moment.

And he very quickly asked -- explained the situation to Mr. Ornitz, said that there was some baggage that he needed to have picked up and that the bags might be hot and that there might be some narcotics in them, and he said to Mr. Ornitz that he knew that he had had some trouble and didn't want him to become involved in it but asked Mr. Ornitz if he thought his friend might be interested and Mr. Ornitz indicated to Mr. Freeman that, you know, the only way to

know would be to ask him.

Mr. Freeman then asked Jock Davis if he would be interested in going to the Paramount Hotel, and I believe Mr. Freeman's words, or an approximation of them are, that he knew a girl who had some bags at the Paramount -- at the Paramount Hotel, which is just up the street, and the girl had some trouble and the bags might be being watched, and that there was a small amount of cocaine in the bags and asked him if he would pick up the bags and said that if you pick them up you might score some cocaine from them. He said I'm not interested in the cocaine. I just need to get the bags back for her.

Mr. Davis originally declined and Mr. Freeman said, "Well, if you don't want to go, that's cool," that's all right with him.

Mr. Davis then changed his mind and said, "O.K., I'll go."

Mr. Davis said -- excuse me. Mr. Freeman then told Mr. Davis the young girl's name and told him how to get to the Paramount Hotel and gave him three $20 bills with which to pay the room check and Mr. Freeman said that Mr. Davis then left for the Paramount Hotel with Mr. Ornitz accompanying him to watch out on the street.

(Continued on next page.)

Q Continue, please.

A The next line of questioning which we covered with Mr. Freeman concerned his knowledge of George Morao and he said that he had known -- Mr. Freeman said that he had known George Marao for some time and that he did not know George Marao to be a smuggler of cocaine.

He said, however, that in the past, primarily for business reasons, he had purchased small amounts of cocaine from Mr. Morao and had himself sold or transacted small amounts of cocaine as merely a business accommodation in the line of work, in the music and nightclub industry, and some of this cocaine was cocaine that he had gotten from Mr. Morao.

Q During the time that you were speaking to Mr. Freeman, did he say anything concerning Saturday and any activities concerning Ms. Rosalys Rudner?

A Yes. Also on Saturday, while Ms. Rudner -- this was Saturday the 16th again, while Ms. Rudner was at Mr. Freeman's apartment, Mr. Freeman was asked to and did obtain a barber to come to his apartment and cut Miss Rudner's hair.

She said that she wanted her hair cut shorter and Mr. Freeman called a friend of his, a barber, who came to the house and cut Miss Rudner's hair and then departed.

Q Did Mr. Davis ask --

THE COURT: What day was this?

THE WITNESS: Saturday, the 16th, your Honor.

Q I am directing your attention, Mr. Silvestro, to anything Mr. Freeman said, if anything, concerning that phone call to the Paramount Hotel. Could you be more specific as to that?

A Mr. Freeman said that -- again, he called because Mr. Morao had asked him to and on behalf of Mr. Morao, and that he, in the course of the phone call, merely asked if they had a Miss Rudner registered there and apparently he was told yes.

Q Was Mr. Freeman asked the question or words to the effect whether he had stated Davis was coming?

A At the time of the --

Q Yes?

A One of the issues that we wished to ask Mr. Freeman about at this meeting was whether or not he had stated any name when he called the Paramount Hotel, and Mr. Freeman said that he did not, to his knowledge, use a name.

He merely stated that -- inquired about Miss Rudner and got the necessary information.

Q Was Mr. Freeman asked the further question of

whether or not he knew how Miss Rosalys Rudner had brought the cocaine in?

MR. BELDOCK: Brought the cocaine in?

Q Smuggled the cocaine in, or Miss Tambini --

MR. BELDOCK: I object to the form of the question.

Q Let me rephrase the question.

Was Mr. Freeman asked concerning his knowledge of how the cocaine, the five pounds of cocaine, were brought into the United States?

A Yes. He stated that from his own knowledge he had no idea how the cocaine was brought in.

MR. FRIED: I have no further questions.

THE COURT: Mr. Beldock.

MR. BELDOCK: Yes, your Honor.

CROSS-EXAMINATION

BY MR. BELDOCK:

Q I will try to follow the chronology of your examination on direct.

Let us start with the events of the arrest of Jock Davis on June 18th. You were on foot close by when the Customs car pulled up?

A I was on foot, sir, as the cars pulled up, I was on the opposite side of Times Square and was watching Mr. Davis

go down when I saw the car pull in front of Mr. Davis. I of course recognized the car and figured that the time had come, and I crossed the street.

Q You rushed over, I take it?

A I crossed the street.

Q When you arrived, or as you were arriving, did you notice whether any guns were being displayed?

A I don't think so, sir. And I'd like to say that -- again, this does not mean that there were not any, I don't remember seeing any, that -- but there had been a discussion before we left the hotel about all the police in Times Square, and that we were sort of afraid that if we came on heavy that perhaps, we'd, you know, get in some sort of a --

Q But you didn't see. You arrived shortly after the actual arrest?

A About the time I reached the car -- back fender of the car Mr. Davis was being searched against the car. So I had the car between me, but I didn't see any.

Q Did you remain in the presence of Mr. Davis from that time until he went to the Hotel Diplomat?

A No, sir, I did not.

Q Did you remain in his presence for some time at the car where he was arrested?

A Yes. I was in the car with Mr. Davis until it was

preliminarily determined that he would go to the Diplomat Hotel.

Q Let's move on to the hotel. Ultimately, you say you saw Mr. Davis at the hotel come in with the bags; right?

A Yes, sir.

Q Do I understand you correctly on direct to say that you saw him carry the bags over to the door that he knocked on?

A I believe that's correct.

Q And did you see Mr. Freeman come to that door?

A I saw someone come to the door. I would, from my vantage point it would be quite honestly difficult to see it was Mr. Freeman. I believe that it was Mr. Freeman.

Q Did you hear anything anyone said?

A No, sir.

Q And then Davis picked the bags up and carried them back --

A Deposited them at the cashier's desk.

Q When you and Mr. Levine were talking to Mr. Freeman at the Hotel Diplomat, and you told him, or Levine told him that if he had any knowledge where Rosalys Rudner was at that time and he game it to you there would be no problem for him?

A That's correct. Mr. Levine indicated that we merely wanted to locate the girl.

Q Was that statement based on your understanding that as far as you know Mr. Freeman had nothing to do with the importation of the cocaine on June 13?

A Up until the time that we arrested Jock Davis we had no knowledge of Mr. Freeman at all.

Q Now let me go on to June 19. There was a conversation in your presence, after a point where Mr. Levine came upon the envelope with Miss Costa's name on it, and then Levine asked Mr. Freeman about that person because the Hotel Albert was involved in a phone number.

A He asked about Miss Costa's name because at that time I believe we knew that there was a Terry Costa that was involved with this fellow George, because this was in the name Costa.

Q Didn't you know about George?

A We knew about George. We didn't have his last name.

Q You didn't know whether it was George Smith, George Jones?

A That is to my knowledge correct, I did not know.

Q The first person who told you his name in the course of this investigation, the first source of information of his name came from Stanton Freeman -- I'm talking about

his full name -- on June 19?

MR. FRIED: I object as to form.

THE COURT: Overruled. I will allow it.

Q On June 19.

A To be perfectly honest, I don't specifically recall. However, this is not impossible. It is possible.

Q To the best of your recollection, when Mr. Freeman told Mr. Levine on June 19 that the person involved was a George Simon and George Morao, known by both names, had you heard those second names before?

A No, sir.

THE COURT: I don't get that question.

(Question read.)

THE COURT: Sustained as to form.

It assumes a fact that is not based on any evidence.

Q Didn't Mr. Freeman, in the presence of Mr. Levine, when he was explaining that all this could be straightened out, I did a favor for a friend to pick up the bags, didn't he say that it was George that was the friend?

A At one point -- Mr. Freeman changed his story many, many times. At one point he said that there was -- Mr. Levine asked him who it was that called and asked him to pick up the bags and he said well, it was a friend, and ultimately we reached the point that the friend's name was George Simon.

THE COURT: Did he ever tell you that George Simon was also known as George Marao?

THE WITNESS: Not in those words, your Honor. He later said that the man's name was George Morao.

THE COURT: At what point in time did he tell you that?

THE WITNESS: This was later on in the evening of the 19th.

Q Same occasion, right?

A The same date, yes.

Q Did he tell you then, if you recollect, that he had an old phone number in his phone book which Levine showed him for this fellow George Marao, but did not know then, June 19, what number he could be located at or where he could be located at?

A I would --

Q Did he say that in substance, in fairness, Mr. Silvestro?

THE COURT: One June 19?

MR. BELDOCK: Yes, on June 19th.

A He did, yes. However, --

Q I would --

A I would like to --

Q I know you want to make explanations.

THE COURT: Strike out everything after "He did."

Go ahead, Mr. Beldock.

Q When you went to see Mr. Freeman on June 18, was there a warrant in existence for the arrest of Rosalie Rudner?

A No, I have no knowledge of this. I don't know if therewas or not.

Q Do you know when, if ever, a warrant for her arrest was obtained?

A No, sir, I do not.

Q Do you know who handled that warrant transaction, if you know?

A I would assume that Mr. Levine did.

Q Certainly there is nothing that you have said so far about a warrant for Rosalie Rudner in your direct testimony, right?

A I have said nothing about a warrant.

Q You don't recall those words being used?

I have heard you say on direct that the Exhibit 1 photographs were shown to Mr. Freeman at the hotel. Did I hear you correctly?

A Which are the Exhibit 1 photographs, sir.

Q This.

A The ones on the paper were shown.

Q Those were shown to him at the hotel?

A That's correct.

Q But not on June 19.

A I believe they were shown to him both times -- on June 19th the new photographs were shown to him.

(continued next page)

Q When Mr. Freeman spoke about getting a lawyer for Mrs. Costa, that was on June 19, right?

A That's correct.

Q And he explained that the first recent contact he had with George and/or Theresa was when George called and asked Stan to recommend a lawyer for Miss Costa's Immigration problem?

A That is incorrect, sir.

Q What did he say about that?

A What he said was that -- he was asked about the name on the travel folder and he said that that was some girl whom he did not know that a friend of his had called and asked if he could recommend a lawyer for. And he at that time did not state who that friend was.

Q Didn't Mr. Freeman acknowledge to you sometime, or Mr. Levine, sometime during the 19th of June that Theresa Costa and George Simon, also known as Morao, were a couple?

A I don't believe so, sir, at least not in my presence.

Q You say that you knew -- at that time you knew that Theresa was involved with someone named George?

A We knew because of statements that --

Q Wasn't that discussed with Mr. Freeman then?

A -- had been taken from the --

Q Wasn't it an accepted part of the conversation

that Theresa and George went together?

THE COURT: If you can't answer the question yes or no, say you can't answer it.

A I can't answer it yes or no.

Q Incidentally, did you in the course of your investigation of this case, or did any other agent that you know of, either before we came to your office on August 16 or after Stan first talked to you back on June 19th, make an investigation to determine whether or not there was an Immigration problem for Theresa Costa and whether or not she had obtained a lawyer that week and whether or not Mr. Freeman had anything to do with the obtaining of the lawyer?

A I conducted an investigation immediately after the -- the following day we spoke to Mr. Freeman about the Immigration hearing primarily because we were interested in gaining information about Theresa Costa.

I called the Central Records Bureau of the Department of Immigration here in New York and spoke to Mrs. Radkin, the file lady there, and gave her the name which appeared on the envelope and she said that there was no file extant in New York on that name, and I said I was almost certain there had been an Immigration hearing for the lady -- a deportation hearing in the previous week.

She suggested I call Newark, which I did, and spoke to the records lady there. And they stated that they had no file on anyone by that name. I then called back to the Immigration file room in New York and asked for suggestions, and the lady there suggested that I try the Deportation Section. I called there and spoke to an Immigration agent and he said he would check the files and see if there had been a deportation hearing.

Later on he got back to me and said there was one. So up until that point we could not find a record, a documented case file on Miss Costa.

Q So you were making an investigation of what Freeman had told you. Did you conclude from your inability to find that file that maybe Freeman was not telling the truth?

A That was one of the possibilities. It is difficult in conducting an investigation of this nature to -- perhaps it would be presumptuous to conclude anything too soon. It's possible. It's possible that the file was perhaps out or someone lost it or in fact there was not a file or a file was not kept.

Q Did you ultimately determine after the meeting of August 16 at Mr. Fried's office that Mr. Freeman was telling the truth and that there was such Immigration

proceeding and if you investigated this fact that he is the one who made a call to someone to get the name of the attorney --

THE COURT: That's about five questions, Mr. Beldock. One at a time, please.

Q Did you ultimately determine after August 16 that there was such an Immigration hearing for Theresa Costa?

A We determined prior to August 16 that there was an Immigration hearing for Miss Costa.

Q And that it involved the period around June 10 to 18, roughly; is that correct?

A That's correct, sir.

Q Did you speak to the attorney or did any agent speak to the attorney who represented her?

A The attorney was spoken to, I believe, by Mr. Levine.

Q Let's go to the meeting of August 16 at Mr. Fried's office. It was a very long meeting, right?

A It was a long meeting.

Q And we were all were together the entire time except for about 15 minutes when Mr. Fried had to take another matter in his office. Do you recall that?

A Yes, sir, I do.

Q And do you recall that we were there for almost four hours, certainly three to four?

A I would guess that perhaps three, that would be my explanation.

Q Before you came there were you advised by Mr. Fried that I and my associate Miss Wresian had been to Mr. Fried's office the day before and had also spent reviewing Mr. Freeman's story a long time, giving great detail?

A I knew that you had been there, sir, and I did not know that you had been there and discussed the story in great detail.

Q Did you know that we were there to discuss the story and therefore, as a preliminary matter to the appointment of August 16 --

A I knew merely that there had been a meeting between yourself and Mr. Fried at that time.

Q Did you also know that there had been conversations with myself or Miss Wresian and Mr. Fried going back to approximately August 8th when we first formally became involved in this case, did you know that?

A No, sir, I did not.

Q So did Mr. Fried at any time, if you know, on August 8 and August 15 advise you of various information that we had given to the United States Attorney's office?

A No, sir.

Q He didn't advise you about any information we gave concerning David or George?

A No, sir. I was first apprised of that on the 16th.

Q Now, you did not take notes at that meeting?

A No.

Q I would like to review the entire meeting and see if whether certain other things which may or may not have been said you now recollect. When you first asked Stanton Freeman about how he got involved with Morao and Theresa, weren't you told in the course of that explanation that as well as he could remember on Friday night, June 10, he was at his home on Perry Street, and he received a call from George?

Would you like me to go on and see if it refreshes your recollection?

A To the best of my recollection, the initial contact of that sequence was perhaps June 8th.

Q You are right, because I have the wrong date or the wrong day. June 8th was Friday. Thank you. So you do remember that that's where we started, right?

A Yes.

Q Did Mr. Freeman tell you that before that time came he had not heard or seen -- heard of or seen George for at least six weeks to two months, or at least six weeks?

A For some time.

fL:jk
x 5AM R1

Q Well, wasn't it more like at least six weeks? We're talking about a conversation he only had on the 16th. Wasn't there a discussion about the Deodato concert?

A Right.

Q We tried to figure out the time. It had been some substantial period of time?

A I'll acquiesce, it was some substantial period of time.

Q As a matter of fact, in the course of the Government's investigation of this case didn't you determine that George Morao was out of the country for some substantial time prior to June 8?

A He was out of the country, yes, sir.

Q For how long?

A For at least some two weeks.

Q A few weeks? What do you really know?

A I know personally that he was out of the country. I do not specifically recall for how long. However, I would say that to the best of my recollection it was perhaps in excess of a month.

Q Do you remember Mr. Freeman was trying to determine when it was he last saw Morao that he in reconstructing talked about the fact that to his knowledge Teresa and the baby had left the country first?

A Yes, sir, I recall that.

Q And that he knew Teresa was taking the baby down to her grandparents in Brazil, from conversations that he had with him -- right?

A That is correct.

Q And he said that he had socialized with Teresa and George and they had been to the Deodato concert together?

A I recall that, yes, sir.

Q And he talked to you about the fact that he and Mr. Freeman and his lady friend and George and his wife had been out on some occasions socially, and he was pinning this time to that particular one -- right?

A That's correct.

Q And did he tell you that about two weeks, I think, after he understood Teresa was leaving he had a conversation with George and George said he was going out of town for awhile, or something to that effect, Stan owed him some money, and that George might send a friend around named Davis to pick the money up in the next week or so?

A That's correct, yes, sir.

Q Did Stan tell you that George had not told him where he was going but that he thought that George mentioned something about going to Woodstock; do you remember that?

A I do remember that, yes, sir.

Q So that from our office conference Mr. Freeman

told you this background, and he said from that time until June 8 he hadn't heard from George.

Now, the phone call on June 8; did Mr. Freeman tell you --

MR. FRIED: Your Honor, I would like to object to the extended questioning concerning all of the statements that Mr. Freeman provided in the office.

THE COURT: I don't know the purpose.

Now, the mere fact that the Government offers admissions -- maybe you'd better classify it as admissions against interest. We are not talking about exculpatory statements -- does not give the other side the right to state -- to give the defendant's whole version. I am going to pay little attention to it. It is not subject to cross-examination.

I am not going to limit you because you may claim that some statement made may be an explanation or modification of an admission, but it's not the purpose nor the right of a defendant to give his whole version as to what happened because the Government offers incriminatory admissions.

It's non-jury, so the rules of evidence are liberal, so I'll allow more than usual, but I promise you I'll disregard the statements that don't explain, modify, correct whatever the Government has offered.

So with that in mind you can go ahead.

MR. BELDOCK: Well, I am trying to follow those guidelines, your Honor. I am trying to establish what was told, if I may give you some idea of what I am doing --

THE COURT: No, you go right ahead. I think it's easier to take it from the witness. I know that the defendant said not guilty. I understand that. But giving his version without submitting him to cross-examination just is improper.

MR. BELDOCK: One of the things I hope to bring out, your Honor, is the extent to which the Government subsequent to this conference was able to verify some of the things that were said.

THE COURT: So what? Are you trying to tell me that because he told the truth in some respects that I should believe that when he made exculpatory statements that are obviously false

that I should weigh that in the light of the statements that he made that turned out to be true?

We have to use our good common sense in these matters.

MR. BELDOCK: I certainly expect your Honor to consider --

THE COURT: The mere fact that George Morao went to Woodstock and that there was a festival at Woodstock, and the Government confirmed that, is of no consequence.

MR. BELDOCK: Your Honor, I think it's best that I continue with the examination, but I ask your Honor to listen to the entire conversation in the context of the entire case before your Honor determines whether you should disregard --

THE COURT: Of course, I'll do that.

MR. BELDOCK: (Continuing) -- these statements in relation to his original statements.

THE COURT: I intend to do that, but spare me the three hours that you spent with the United States Attorney.

MR. BELDOCK: I'm doing the best I can.

THE COURT: I'm sure ninety per cent of it has no reason for being in this case.

Go ahead.

Q Did Mr. Freeman tell you that when George Morao first called up on the night of June 8th the following transpired: that George advised him that he was back in town, and then Freeman for the firsttime learned that George had been in Brazil with Teresa?

A I believe that's correct, yes.

Q That George said that he and Theresa had some gifts for Mr. Freeman and his lady friend Joy, and wanted to come over and deliver them some time soon?

A I recall him saying that he had gifts. I don't remember him saying that he wanted to come over and deliver them.

Q Well, not that day, not that day.

A I don't specifically recall it.

Q Okay, fair enough. That Theresa had a problem with Immigration involving a conflict between a permanent visa application and a visitor's visa, and that Freeman was asked to recommend a lawyer?

A That's correct, yes.

Q And that Freeman said he would make a call and advise them when he found out a lawyer, is that right?

A I believe he said that he knew someone who could recommend an attorney familiar with Immigration matters.

Q And that he'd have to check with that person and get back to them?

A Yes.

Q And that at that time Mr. Freeman asked where he could reach George and Theresa, and he wrote down the information that is on one of these exhibits -- apparently not this one, the other one that shows the room number and telephone for the Hotel Albert -- wrote it down on an envelope?

A I cannot state that I recall him saying that, sir.

Q Does the showing of Exhibit 4 to you in any way refresh your recollection?

A This was not available to us at our meeting, and I do not recall him saying where he wrote it down. We agreed that he had an address, or a telephone number where he could be reached.

Q Hotel Albert, that he wrote down on something -- right?

THE COURT: Could you identify the exhibit by number?

MR. BELDOCK: Exhibit 4, your Honor.

THE COURT: I'd appreciate the lawyers

doing that.

Q And did he also tell you that during that telephone conversation he said to George, "Why don't you stay with us?" He made some offer to that effect?

A That was the time of the initial offer to which I alluded.

Q Right. And that then George declined the invitation, and that was the end of the conversation?

A That's essentially correct, yes, sir.

Q Did Mr. Freeman tell you the following things about the weekend of August 9th and 10th: that some time during that weekend he saw George and Theresa at least once together?

A The weekend of August 9th and 10th, sir?

Q I said August? I'm sorry, I meant June. That he saw George and Theresa over that weekend at his house, Freeman's house?

A That's when they, I believe, brought the gifts.

Q Brought the gifts. He talked about the trip to Brazil? He talked about that?

A Yes, sir.

(continued next page)

Q And that during that time there was a discussion about Freeman's club, Les Jardins, which was going to open up on June 13, as a result of which George suggested that he would produce brochettes for the opening?

A George suggested that -- that Stanton go for the brochettes. A gimmick.

Q That was the beginning of conversation on that weekend and the next several days, as Freeman told you in the office, about brochettes -- right?

A The conversations were very spotty, but I believe that the negotiations with them continued up until either Tuesday, the 12th or the early morning of Wednesday, the thirteenth.

Q And Mr. Freeman told you that he had some telephone call then, with a fellow named David, who he did not know, whose number had been given to him by George -- right?

A I do not recall that, sir.

I recall Mr. Freeman stating that George told him that -- told Mr. Freeman that he had a friend named David who would help them, would assist him in some way.

I don't specifically recall statements concerning a telephone call between David and him.

Q Do you recall that Mr. Freeman said at the office on August 16th, that in those few days, between the 10th and the 12th, on one occasion George -- he brought George or George came down to Les Jardins and had a short discussion

with the manager, Mr. Addison, about the brochettes?

A Again, I recall that Mr. Morao was at the -- was at the Diplomat.

Q For the purpose of discussing brochettes?

A For the purpose of examining the physical layout, I believe.

Q And then did Mr. Freeman tell you that project of the brochettes broke down because of time pressures and the inability to produce and so on?

A Yes, among other things.

I think the financial consideration also.

Q Now, did Mr. Freeman, at the office tell you the nature -- the extent of the hours that he was working on the job he was doing at Les Jardins and at the other club he was opening at the same time, Le Privee, during the week of June tenth, through the rest of the week?

A Yes, sir.

Q What did he tell you?

A Well, let me say that in -- in my previous testimony, I sort of lumped Les Jardins and the other club together, because they are.

Q The same club?

A Yes, essentially.

Q One is on the roof and one is in the basement--

right?

A Right. He stated --

Q He was opening two clubs at the same time?

A (Continuing)--that he had been working very long hours, and it had become the norm of his life to go to work in the late evening, or what he considered early, I would consider it late, evening hours and to work through the morning.

And that during this -- this time, he had worked many, many hours.

Q Without going into the details of every day involved, didn't we, at the office, then go into the details as to approximately what time he came home each of the days of that week, what he was doing at the club, and the details of the people he was with and so on?

A Not -- not in terms of specificity. We -- we agreed, I believe, that he was working quite late most of the days. And I could not --

Q Are we talking about five A.M. sometimes, like on the day of the opening, which was the night of the thirteenth, he didn't get home until after six -- right?

A Right. I also -- I don't believe we specifically went through Monday and Tuesday, because there was a breakdown as to Wednesday, Thursday and Friday, as to when Morao and Costa actually showed up. I think towards the end of the week,

Mr. Freeman's recollection faded.

Q We were talking in the office about Mr. Freeman --Mr. Freeman was talking -- I mean -- withdraw that.

In the office, Mr. Freeman said he was not sure whether George and Theresa arrived at his house on the fourteenth or the fifteenth; that as he tried to reconstruct everything, it seemed to him logical that it was on the fifteenth, but that it possibly could have been the fourteenth, isn't that right?

A That's what I testified to, and it's to the best of my knowledge, correct.

Q Did he tell you that he had expected to see George and Therese at the opening on the night of June 13, that many, many people came, some several thousand people; is that right?

A He -- my impression was in excess of a thousand, and I do specifically recall him saying that he was disappointed that he had not seen the Costas, or George Morao and Theresa Costa.

Q Now, still sticking always to the August 16 conference, did you learn from Mr. Freeman that whether it was the 14th or the 15th, he received a call from the Costas, from George and Theresa, or from George, requesting that he-- I may be wrong about that.

Did he say they arrived? That's what he said? Right.

He said it was not unusual for George to drop in, but on this occasion they arrived with the baby, without any baggage and asked if they could stay, and he said, "Sure, the place is yours"?

A I believe they arrived with a -- some sort of baby carriage and some sort of Didy-bag for the baby.

Q And this was sometime during the day of -- to the best of his recollection -- Friday, the 15th.

A I don't think we ever -- or Mr. Freeman could specifically recall. We never decided whether it was the night of the fourteenth or the day of the fifteenth.

Q Fair enough. You testified about a time when Mr. Freeman took his motorcycle and drove over to the loft that the Costas were preparing. When you testified to your recollection at the August 16th conference, you said that took place on Saturday, and I am trying to refresh your recollection. Didn't Stanton say that his best recollection of that event, must have occurred on Friday, because it was good weather on Friday and he rode his motorbike in good weather, and it was raining on Saturday?

A I would have to say, sir, that to my best recollection it was Saturday.

This is --

Q Didn't he go -- on Saturday, didn't he go to the

Hotel Albert to pick up the bags for George and Therese?

A That's correct. That's correct, that was on Saturday.

Q The Government never knew that, did they?

A No, sir.

Q None of the agents had any of that information, to your knowledge?

A No, sir.

Q We told the Government, through Mr. Freeman that day, that he had paid for the bags, is that right, at the Albert?

A Mr. Freeman stated that he had paid the hotel bill on --

Q Of $8 some?

A Of Theresa Costa. He did not give a figure. He said he obtained the hotel bill and obtained the baggage, and a receipt for having paid the bill.

Q Do you recall him saying he had paid around $8 or $10, or something like that?

A I am sorry, sir, I do not specifically recall him mentioning an amount.

Q Now, after our conference, to just go away for a moment, did you check that out, did you investigate at the Albert?

A I did not, no, sir.

Q Did somebody, to your knowledge?

A I would -- I would -- someone investigated, I believe, the bills that we had from the Albert.

Q And initially the Government thought that we were still not telling the truth about that?

MR. FRIED: Your Honor, I object to the --

THE COURT: Sustained.

MR. FRIED: (Continuing)--characterization of what the Government thought.

Q Did you ultimately determine that so far as someone going to pay for that bill, paying -- withdrawn.

Did you ultimately determine that a payment had been made to the Hotel Albert on the day that Mr. Freeman said?

A I did not determine that, sir.

Q You testified regarding Mr. Freeman's information to you as of Friday evening, June 14?

THE COURT: Friday evening, June 14th?

MR. BELDOCK: Have I got that right?

June 15th, I am sorry.

MR. FRIED: Friday evening, June 15th.

Q Friday evening, June 15th, did the following occur, according to Mr. -- withdrawn.

Did Mr. Freeman tell you on August 16, that the following occurred on Friday evening, June 15th: That either late that night, or running into the very early hours of the 16th, he

called his home to see how things were with the Costas?

A I testified to that, sir.

Q And that he said to them, "Look, I am going to be home late, why don't you use the bedroom upstairs"?

A I did not testify to that. However, I do recall him having said that.

Q That George said, George said to Stanton on the phone "There is a lady friend of Theresa's who is here. Can she stay? Do me a favor and have her stay, too."

A I -- to my recollection, it was not worded that way. However, that is in essence what was -- what was said.

Q Then Mr. Freeman told you at the August 16th meeting -- correct me if I am wrong, -- that he came home earlier than he had expected, and that he met this boy friend of his wife's pacing around in the courtyard of his home -- right?

A I do not recall that he came home earlier than he expected, but I do recall, you know, quite well, that he met -- met the boyfriend.

Q And the boyfriend said to him, according to Mr. Freeman, that he had some sort of argument with Dawn, and he wanted to know whether Dawn was in the house -- right?

A Something to that effect, yes. Perhaps that she was in the house.

pc

Q And Stan said that he had no idea that she was there but he'd go in and check, is that right?

A That's correct.

Q Did you learn in the course of your investigation that Mr. Freeman and his wife Dawn Freeman are physically separated and live in different households?

A Yes, sir.

Q Then did Mr. Freeman tell you that when he and this friend of Dawn's went to the door, the chain was on, and George came to the door, opened the chain and went back to sleep?

A Someone opened the chain and went back to sleep. I don't recall whether it was George or --

Q You don't recall him saying George? And do you recall him saying he saw two other figures under sheets there?

A Yes.

Q Whom he took to be Theresa and their friend -- right?

A Yes, sir.

Q But he was not introduced to them and did not see them at that time, otherwise?

A They were for all practical purposes, he said, asleep.

Q And the rest of the events had to do with

Mr. Freeman's straightening out the argument between Dawn and the other fellow?

A Yes, sir.

Q And that's all that happened that night according to what Mr. Freeman told you.

Going to Saturday, Mr. Freeman told you, did he not, that it was a very complicated and wrong day, many things happened -- many things happened on that day?

A Are you saying that he told me that or that he told me things that were -- that would indicate that?

Q Both.

A He told me things that would indicate that. And he said in addition to the specific instances which I enumerated, that Mr. Freeman told us about, he said that he had other business matters to attend to, primarily on the phone.

Q Let's see if you recall Mr. Freeman telling you the following events, whatever order he told you them, regarding Saturday at his house. Sometime after he got up in the morning he was introduced to the ladyfriend of Theresa and George, and he was introduced to her as Josie with a soft J.

A Right, correct.

Q And she spoke Portuguese, and therefore at

no time during the time she was there did he have any intelligible conversation with her; is that correct?

A Yes, ostensibly. I believe that she knew, perhaps, one or two words of English, but was not conversational by any means.

Q When George or Theresa spoke to her they spoke in Portuguese -- right?

A That's what he stated, yes, sir.

Q He told you that George was in and out, very hyper-active and in and out all day long, is that right?

A He said that George was -- was hyper-active.

Q George didn't want to make any phone calls there or take any phone calls there, that he got that impression?

A Yes, that's correct.

Q And that George went out a number of times and came back?

A Now, I don't recall specifically that. I deliberately deleted it from the last question that you asked me.

Q Did he tell you that sometime during the day after this man David arrived, and while Freeman was busy making a phone call, David and/or George asked him if he had any maps of Vermont?

A That's correct, sir.

Q And that Freeman reached for one of the maps and tossed it to them?

A That's correct, sir, he testified -- or he stated to us that he did that.

Q And did he tell you that he overheard also while he was busy with his own affairs, but in the same area -- he overheard some conversation between George and David regarding how easy it was to go across the border from Vermont to Canada?

A I believe that he said that the whole construction of their conversation was concerning Canada and the United States border, and that's why Vermont came into the picture.

Q And did he tell you that in the same sequence of events he overheard David making a call presumably to someone in Vermont, and in turn, David, to the best of his recollection saying something about -- on the phone, saying something about making arrangements to go fishing next week?

A That's correct, sir.

Q Now, all of these pieces and information that I've just recited about the David-George conversation and the border to Montreal -- the border to Canada, and going fishing, did the Government ever know any of those facts before, to your knowledge?

A Yes, sir.

Q From?

A Sir?

Q From David?

A Yes, sir.

Q So that what you learned coincided with what you had known before?

MR. FRIED: I object.

A To some degree.

MR. FRIED: I object to the characterization of what dove-tailed.

THE COURT: Sustained as to form.

Strike out the answer.

Q Did Mr. Freeman tell you that George and Theresa were hassling about getting the bags, their bags at the Hotel Albert?

A Yes, sir.

Q And that after some while -- withdrawn.

That George didn't want to go, Theresa wanted to go, but George didn't want her to go? There was conversation back and forth along those lines?

A I don't specifically recall that, sir.

Q Did Mr. Freeman tell you that he was asked or he agreed that he would get the bags?

A Yes, that's correct, Mr. -- Mr. Freeman ultimately,

yes, sir, as a service to George, said that he would get the bags.

Q That he went and got a cab, and went down to the Hotel Albert -- right?

A That's correct.

Q That they gave him the keys to the room -- right?

A Yes, sir.

Q And that he went upstairs, picked up their baggage, went downstairs, made a payment on the bill, and brought the bags back?

A He stated that he went to the hotel, got the bags, paid the bill, obtained a receipt and then went back.

THE COURT: What day was this again?

THE WITNESS: This was on Saturday, your Honor.

THE COURT: 16th?

THE WITNESS: That's correct, sir.

(continued on the next page.)

Q Now again, this is information that the Government had no idea about; right?

A That's correct.

Q And when we were at Mr. Fried's office -- withdrawn.

You testified about what Mr. Freeman said to you --

THE COURT: Excuse me just a moment. There is something that I want to clear up in my own mind.

In other words, George and/or Theresa had a room at the Hotel Albert?

THE WITNESS: That's correct.

THE COURT: On the 16th?

THE WITNESS: That's correct.

THE COURT: They had lived at Freeman's house since when?

THE WITNESS: Since --

THE COURT: According to his version?

THE WITNESS: The 14-15, according to his version, they had been at his house.

THE COURT: Did he say something about George and Theresa or there is a variation of that first name, I know, but Costa staying at his house because something was being painted?

Was that a loft?

MR. BELDOCK: It was the original --

THE COURT: I want to ask the witness.

MR. BELDOCK: Excuse me.

THE WITNESS: Mr. Freeman stated that he knew that the Costas or George Morao and Therezinha Costa had a loft which was in a state of disrepair, which they were fixing up to live in, and as a result of this, because they had a child, they went to the Hotel Albert to stay, until -- until such time as the loft was considered habitable for the child.

THE COURT: But they went to stay at the Hotel Albert, he said because the loft was being painted, but they slept at his house at Perry Street? Isn't that what he said?

THE WITNESS: Essentially, that is correct.

THE COURT: All right. Go ahead.

MR. BELDOCK: Judge --

THE COURT: No. Ask the witness the questions, not me. I wanted to get the testimony straight.

BY MR. BELDOCK:

Q Mr. Silvestro, am I correct in saying that

Mr. Freeman told you that he did -- they did not sleep at his house until probably the 15th, although it might have been the night of the 14th?

A This is correct.

Perhaps it was misleading. I think that Mr. Freeman stated that he was under the impression that they had been at the Hotel Albert for some period of days and then came to his house to stay.

Q Do you recall --

THE COURT: I understood he, Mr. Freeman, to say that Costa and Morao came to live with him. They didn't check out of the hotel Albert. They slept at his house while they had a room at the Albert Hotel; right?

THE WITNESS: That is correct, your Honor.

THE COURT: And then he went to the Albert to pick up their baggage and pay for the room?

THE WITNESS: That is correct.

MR. BELDOCK: That is correct. That's what we told the Government, but we're talking about the night of the 15th, probably into the 16th.

THE COURT: I know.

BY MR. BELDOCK:

Q Right, Mr. Silvestro?

A Probably.

Q Now --

THE COURT: You know, there are questions in my mind as we are goingwith the conversation.

MR. BELDOCK: Yes, Judge.

THE COURT: That is pretty obvious, isn't it?

MR. BELDOCK: Well, you haven't heard the whole conversation.

THE COURT: I know it. I am waiting breathlessly.

Let's go.

MR. BELDOCK: Well, when your Honor says that there are questions in your mind --

THE COURT: Yes. Would you like to know one of the many that have come to mind?

MR. BELDOCK: Well --

THE COURT: Why couldn't George check out at the Albert when he left?

MR. BELDOCK: Your Honor will find out in the context of the conversation whatever explanations

can be reasonably given and were given.

THE COURT: All right.

MR. BELDOCK: But, your Honor, we're not trying George.

THE COURT: I beg your pardon?

MR. BELDOCK: We are not trying George Morao. We are trying Stanton Freeman.

THE COURT: Oh, I am aware of that.

MR. BELDOCK: There is no question in my mind or --

THE COURT: It's Mr. Freeman's version of how Morao got into his house. That is of some importance here, since we are talking about exculpatory statements later shown to be false.

MR. BELDOCK: Yes, and that's why I want your Honor to hear the entire conversation to Mr. Silvestro because we were not naively nor was Mr. Fried naively in that office. We went into each of these questions that come to your Honor's mind.

THE COURT: I assume so.

All right. go ahead. That is the part I am interested in, not that Mr. Freeman straightened out a matter between his former wife or his

present wife and her boyfriend.

MR. BELDOCK: It's difficult to take it out of context, Judge.

THE COURT: Try. Try, Mr. Beldock. If it's unrelated, do not give it to me. I am only interested in the issues in this case. We will leave the matrimonial problems to the State Court.

BY MR. BELDOCK:

Q Did Mr. Freeman tell you that on Saturday, June 16, he learned from George -- George told him that this girl Rosalys was very upset because her boyfriend got busted?

A That's correct, sir.

Q Did Mr. Freeman tell you that he learned from George either Friday afternoon or Saturday that George, to his knowledge, that George had retained an attorney for some friend of his who got busted on drugs at the airport?

A Mr. Freeman stated that Mr. Morao told him that he had obtained an attorney for a friend who was arrested at the airport on a cocaine charge prior to Mr. Morao's having told Mr. Freeman that the person arrested at the airport was the boyfriend of Rosalys Rudner, the lady who was staying with him, and that occurred, I believe, on Saturday,

to the best of my recollection, sir.

Q So there is no question about the fact that when we were at your office we were telling you things about Mr. Freeman's knowledge from conversations with George Morao or with others, that you had from no other source up to then; is that fair?

A It's fair to say that some of the things which Mr. Freeman told us concerning his and George Morao's activities we at that time were not aware of.

Q Did Mr. Freeman again tell you about a conversation he had with George Morao on the 16th, I think, but maybe it was the 15th of June, where Freeman learned the name of the lawyers that George had contacted? Mentioned -- George may have mentioned Katz or Cohen?

A Katz, Sanford Katz was the attorney that George mentioned.

Q In the conversation, Freeman learned that that was the firm or verified that that was the firm that Mr. Lefcourt, Gerald Lefcourt is in; right?

A Mr. Freeman I believe stated that he knew that --

Q He knew a -- they knew they were good lawyers; right?

A Mr. Katz was an associate of Mr. Lefcourt, that is correct.

Q And that he had come to know Mr. Lefcourt in connection with the Hotel Diplomat? His family has an interest in there; right?

A It's correct that Mr. Lefcourt's family has an interest there. However, I do not recall Mr. Freeman saying -- saying that he told Mr. Morao this.

Q Not that he told Mr. Morao, that the Lefcourt family had an interest there, you're right. Mr. Freeman did say --

THE COURT: Now, don't you assess the credibility of this witness.

MR. BELDOCK: I'm sorry.

THE COURT: Let's have it from the witness.

Q Let me get that straightened out again. For one thing, was there a discussion among the five of us on August 16th about the Hotel Diplomat and who had what business interests in it, where the name of Lefcourt family was discussed?

A That is correct, sir.

Q And then was there a discussion on that day concerning the fact that Mr. Freeman had come just to know and meet Mr. Lefcourt in the course of business involving the Diplomat? I mean, Gerald Lefcourt, the lawyer?

A It was established, I believe, that Mr. Freeman knew

Mr. Lefcourt. However, I don't think it was determined whether he knew him prior to coming to the Diplomat or whether he merely knew him through theDiplomat.

Q Now let's go back to what Freeman told you about his conversations with George about the lawyers. Did Freeman tell you that he learned through George that George was busy trying to get up money for the lawyers for his friend or friends?

A I do not specifically recall him saying that, sir.

Q Do you remember him saying that at one time David, on Saturday, was talking about having to get money for or taking money down to Lefcourt's office, Katz' office, whatever?

A There was a conversation in which I believe David was instructed to deliver money to the -- to the attorney's office. However, I don't recall conversations concerning the need to raise money.

Q Let's see what else I'm -- did Mr. Freeman tell you about Saturday, the 16th, when he was questioned about it in Mr. Fried's office, that in reconstructing things, he believes he knew that George didn't want to go to the Hotel Albert because he was worried about the fact that Rosalys' boyfriend had been busted and he thought it had something to do with it? At least, that's the best he

can reconstruct?

MR. FRIED: Your Honor, I object to the characterization, "at least that's the best he could construct it."

THE COURT: Sustained as to form.

MR. BELDOCK: All right.

THE COURT: Give the witness as near as possible the statement you say that Mr. Fried made at the time.

MR. BELDOCK: Let me --

THE COURT: For the life of me, I can't understand, if the parties agreed this would be introducible into evidence, why it wasn't recorded somehow, instead of guessing at what was said. But I suppose that's the easy way and that's the obvious way. So it wasn't done.

All right.

MR. BELDOCK: It should have been.

THE COURT: All right. Continue.

Q Let me approach it from another direction, the same subject matter. Wasn't Mr. Freeman asked a number of questions at our meeting on August 16th about the knowledge that he had gained over the days the 14th, the 15th, the 16th, the 17th, the 18th, concerning anything that had

to do with the importation of the five pounds, concerning Rosalys, whether or not he knew shewas a fugitive, concerning George and whether or not he knew that George was involved in something? Didn't we question -- all of us questioned Mr. Freeman very deeply on those subjects?

A He was asked several questions concerning the subjects.

Q Didn't he tell you that he knew from prior experience with George that George was a very secretive person?

A That's correct.

Q And didn't he tell you that he knew from prior experience with George that George sold drugs, cocaine; right?

A That's correct.

Q And that very frequently George would run in, run out, that he was always a very hypertense person, didn't want to make phone calls from Freeman's house?

A That's essentially correct. He said that George was hyperactive. I don't recall him saying anything about frequently running in and out.

Q Didn't Mr. Freeman tell you that, yes, as things went on, he knew something was going down, and we will go into the details?

A Yes, sir.

Q But that -- like he didn't want to know George's

business in general? When George had problems, he didn't want to know any more about this than he had to?

A That's what Mr. Freeman said, yes, sir.

Q Didn't Mr. Freeman tell you that he in no way, shape or manner did he have any knowledge or information concerning any importation of drugs into the country on June 13th?

A Mr. Freeman stated that to us, on the meeting of the 16th.

Q And that he had no knowledge or communication of knowledge to him about any of the information about any of the people involved in this case and any scheme to import drugs on that date or any other date around that time?

A Mr. Freeman said that, yes, sir.

Q And did Mr. Fried and you have an opportunity to question him extensively on all aspects of this case that day?

A That's correct, sir.

(Continued on next page.)

GR:pc
take 6/22

Silvestro - cross/Beldock

Q And did you learn from Mr. Freeman information that you never even conceived of, that after you and Mr. Levine had spoken to Mr. Freeman at the hotel on June 18th, that Mr. Freeman called his home, got George on the phone and said, "Split"?

A That's correct, sir.

Q You had no way of knowing that; right?

A That's correct.

Q And Mr. Freeman tell you that he was very frightened at that time of what had happened, that he had -- did he tell you that?

A He said he was frightened, yes, sir.

Q That he had, when he made that call, he had in mind his own involvement with the coke he thought was in those bags and he didn't want to have anything to do with it and he didn't want to have George to have anything to do with him; isn't that right? In substance, didn't he say that?

A In substance that's what he said, yes, sir.

Q Didn't he tell you that he had gained the impression, just from the things he overheard and the attitudes of the people on June 16th, that George wanted to get Theresa out of town and he wanted to get Rosales out of town?

A I don't recall him having said that, sir.

Q Don't -- See if this refreshes your recollection, that Freeman said something to this effect, that during those days George, by the way he was acting and things he was saying, led Freeman to believe that he considered Theresa and the baby some baggage he really needed to get elsewhere, he wanted to get them out of town and that he had the same impression of George and the girl Rosalys?

A He said that he had the impression that George was -- was in encumbered by the child and Rosalys.

Q Rosalys and Theresa, right? Didn't Mr. Freeman also tell you that on Saturday, June 16, George said to him, do you know anyone in Montreal, and that this was continuous of the earlier events about -- between David and George about the border to Canada? Didn't he tell you that?

A Yes, sir, I recall that.

Q And Freeman said that he had not told George anything about anyone in Montreal because he hadn't been there for quite a while? Something like that?

A I don't recall the reason why he said so.

Q Didn't Mr. Freeman tell you that he got the impression as he pieced these things together, that George was intending to go to Canada and -- and/or that George was

intending to get the ladies to Canada? Didn't we tell you that?

A I can't respond to it in the affirmative in that form. There was some question as to whether Mr. Freeman felt whether or not George was taking a trip or was leaving for good, and I don't think that we decided that Mr. Freeman said that he thought George was leaving for good.

Q No, but didn't Mr. Freeman say that from what was going on on Saturday, on the conversations about Canada and the questions to him about Montreal and the Vermont border and David's phone call and the general impression from what George was saying about Rosalys and getting the bags, their bags, the Costa bags, that George wanted to get himself out of town maybe, and certainly wanted to get the ladies out of town? That was the impression Mr. Freeman gained?

A Sir, you're asking me the same question that I just said I couldn't answer in that form specifically. I don't -- I don't recall the baggage having entered into his or the necessity to get the bags having entered into his -- into his theory, and I don't recall him saying that he felt that they were absconding.

Q No. He didn't feel they were absconding, but he felt that something was going on --

MR. FRIED: Your Honor, I obje
This is merely argumentative.

THE COURT: Objection sustained. It is argumentative.

Q I'm sorry.

Would you go on with your explanation?

A Mr. Freeman stated that he -- he got the impression that George was perhaps considering taking a trip north, whether to the -- to the New England states or Canada or whatever. I think that's as far as we've gone.

Q Do you have any recollection now of a discussion on August 16 concerning Mr. Freeman's impression that George wanted to get the ladies out of town?

A I recall very specifically him saying that Mr. Moro stated to Mr. Freeman that he felt he was encumbered by the ladies and the child.

However, I do not recall Mr. Freeman saying that he felt that they were going out of town, that he was shipping the ladies out of town.

Q Now I'm just going to -- I want to stay on the 16th.

You remember the motorcycle trip on the 16th and not on the 15th, but whatever Mr. Freeman told you about the motorcycle trip to the Costa loft -- didn't he

tell you more than that he just brought back a camera and lens? Didn't he tell you that he brought back, at Theresa's request, with her instructions as to where to find it, a box full of papers?

A That's correct, sir.

Q And didn't we, on August 16th, turn over to Mr. Fried and to you a box full of papers, with all kinds of information about George and Theresa, their backgrounds, where they can be located, in the normal course of their lives, etcetera?

A All kinds of information is something which I can't respond to, in an instance where we're trying to be specific.

Q Let's see. This was a UNICEF box; is that right?

A That's correct.

Q It contained George Moro's visa, right?

A It contained a 994, an immigration form in the name of George Moro for -- for June the 13th, 1972.

Q May the 13th?

A June the 13th, 1972, sir.

Q Do you -- were you aware that prior to August 16th, maybe even a week earlier, my office, either myself or Miss Wresien contacted Mr. Fried and gave him

the basic information about George Moro in that visa?

MR. FRIED: Again I object, your Honor. This goes beyond the scope of the conversation.

THE COURT: What's the purpose of this, Mr. Beldock? To show that the defendant is just as anxious as the Government to bring Mr. Moro in? What purposes --

MR. BELDOCK: Partially, Judge.

THE COURT: What purpose can that serve? He is not being charged here with harboring a fugitive. Yet.

MR. BELDOCK: I understand that. I understand that.

One of the reasons, your Honor, for my bringing out this information goes to the question your Honor was asking before, and that's the reason I've been bringing out all this other information now.

I take it from your Honor's questions that you would not be happy to see us having gone in and told a story that was naive and without details about the nature of which we are now giving.

THE COURT: Not through this witness.

7

There is another way of doing -- proving lack of knowledge.

MR. BELDOCK: Yes, I realize that, Judge. But the witness having been called, I feel it incumbent upon me to at least put before your Honor, so we will have a whole picture -- I hope I will be through soon.

THE COURT: I am giving you the right to have the whole picture in. I am just telling you how much attention I am going to pay to the part I deem is totally unrelated to the admissions.

Now, what is the fact that he produced papers? I don't know whether -- all the papers he found. I don't know whether they are the papers without examination.

But the fact that he produced papers, what has that got to do with the admissions that came out on direct?

Now you explain it to me. Maybe I will consider it.

MR. BELDOCK: When you speak of admissions that came out on direct, your Honor, I know of no admissions or facts that involve

8

Silvestro - cross/Beldock

anything that --

THE COURT: I am not going to get into an argument with you. I am not going to make any findings, but, as I see it, that he knew Moro to be a trafficker in cocaine, that he had bought cocaine from Mr. Moro and then the other statements that he had made. Originally he had said that he didn't know a George. Now it appears that he does know a George. He never explained why he didn't -- he denied knowing Moro when he was first approached on June 18.

Now, those are the things I am looking for in the additional statements made on August 16th.

MR. BELDOCK: We did explain it. Mr. Silvestro brought it out.

THE COURT: Well, all right. I will listen very carefully and I will reread everything that was said.

I am just telling you why I consider the -- the testimony about his bringing all these documents that were found in the loft, as unrelated to -- to statements and admissions made on direct. That is all. You asked me the

question.

I am giving you an advisory opinion. I rarely do that.

MR. BELDOCK: I --

THE COURT: I just rule on objections made, and I won't do it again, incidentally. You just keep going on the rulings I have made. I will just sit and listen.

MR. WALL: Excuse me.

Your Honor, I wonder if five to one might be an appropriate time to suspend for lunch?

THE COURT: Well, I wonder if you are saying our clock on the wall is wrong?

MR. WALL: I am saying your clock on the wall is wrong because mine is right. Mine says 6 minutes of. I checked it last night.

THE COURT: All right. It says 10 to 1 on the wall clock.

We will get back here at 2 o'clock.

The way this is going, I do not think that the Government's case will finish today.

Do you expect that Mr. Levine's testimony will be --

MR. FRIED: Your Honor, Mr. Levine's

direct testimony will be shorter than Mr. Silvestro's direct testimony.

THE COURT: All right.

I think you should have your witnesses here, anyway. I want to get as much of the case in today as I can, but I doubt that we will finish today. Bring your witnesses in.

All right, 2 o'clock.

(Luncheon recess taken.)